

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

Bulletin No. 2023-43
October 23, 2023

ADMINISTRATIVE

REG-106203-23, page 1143.

Tax return preparers must use a preparer tax identification number (PTIN) on returns they prepare for compensation. The PTIN must be renewed annually. The IRS charges a user fee on each PTIN application or application for renewal to recover costs for issuing and renewing PTINs. The IRS has recalculated the PTIN user fee and determined the full cost for each application or application for renewal is \$11, plus an amount payable directly to a third-party contractor. These regulations therefore propose to decrease the current PTIN user fee of \$21 to \$11, plus an amount payable directly to the third-party contractor. REG-106203-23. Published October 4, 2023.

Rev. Proc. 2023-28, page 1092.

General Rules and Specifications for Substitute Forms and Schedules

This procedure provides guidelines and general requirements for the development, printing, and approval of the 2023 substitute tax forms. This procedure will be reproduced as the next revision of Publication 1167. Rev. Proc. 2022-31 is superseded.

T.D. 9980, page 1087.

Tax return preparers must use a preparer tax identification number (PTIN) on returns they prepare for compensation. The PTIN must be renewed annually. The IRS charges a user fee on each PTIN application or application for renewal to recover costs for issuing and renewing PTINs. The IRS has recalculated the PTIN user fee and determined the full cost for each application or application for renewal is \$11, plus an amount payable directly to a third-party contractor. These interim final regulations therefore decrease the current PTIN user fee of \$21 to \$11, plus an amount payable directly to the third-party contractor. TD 9980. Published October 4, 2023.

INCOME TAX

REG-113064-23, page 1144.

These proposed regulations would provide guidance for elections to transfer clean vehicle credits under §§ 30D(g) and 25E(f), as established by the Inflation Reduction Act of 2022 (IRA). The proposed regulations provide guidance for taxpayers intending to transfer the previously-owned clean vehicle credit and the new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed regulations also provide guidance for dealers to become eligible entities to receive advance payments of new or previously-owned clean vehicle credits. The proposed regulations also provide guidance for the recapturing of the credit under § 30D and 25E. Finally, proposed § 1.6213-2 defines the omission of a correct VIN for purposes of § 6213.

Rev. Proc. 2023-33, page 1135.

This revenue procedure sets forth the procedures under §§ 30D(g) and 25E(f) of the Code for the transfer of the clean vehicle credit and previously-owned clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the Internal Revenue Service (IRS), the procedures for the suspension and revocation of that registration, and the establishment of an advance payments program to registered dealers. This revenue procedure also supersedes sections 5.01 and 6.03 of Rev. Proc. 2022-42, 2022-52 I.R.B. 565, providing new information for the timing and manner of submission of seller reports, respectively; as well as sections 6.01 and 6.02 of Rev. Proc. 2022-42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I

26 CFR 300.11: Fee for obtaining a preparer tax identification number

T.D. 9980

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 300

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Interim Final Rule.

SUMMARY: This document contains interim final regulations relating to the imposition of certain user fees on tax return preparers. These regulations reduce the amount of the user fee to apply for or renew a preparer tax identification number (PTIN) and affect individuals who apply for or renew a PTIN. The Independent Offices Appropriation Act of 1952 authorizes the charging of user fees. The text of the interim final regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue in the Proposed Rules section of this edition of the *Federal Register*.

DATES:

Effective date: These regulations are effective on October 19, 2023.

Applicability date: For date of applicability, see paragraph (d) of these interim final regulations.

FOR FURTHER INFORMATION

CONTACT: Concerning the interim final regulations, Jamie Song at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains interim final amendments to 26 CFR part 300 regarding user fees.

A. User Fee Authority

The Independent Offices Appropriation Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25).

Under OMB Circular A-25, Federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the service. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the direct and indirect costs of providing the service, unless the Office of Management and Budget (OMB) grants an exception. OMB Circular A-25 provides that agencies are to review user fees biennially and update them as necessary.

B. PTIN Requirement

Section 6109(a)(4) of the Internal Revenue Code (Code) authorizes the Secretary of the Treasury or her delegate to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. On September 30, 2010, the Treasury Department and the IRS published final regulations (TD 9501) under section 6109 in the *Federal Register* (75 FR 60309) to provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such

other number prescribed by the IRS in forms, instructions, or other appropriate guidance. Those regulations require a tax return preparer who prepares or who assists in preparing all or substantially all of a tax return or claim for refund after December 31, 2010, to have a PTIN.

C. PTIN User Fee

Final regulations (TD 9503) published in the *Federal Register* (75 FR 60316) on September 30, 2010, established a \$50 user fee to apply for or renew a PTIN, based on a 2010 Cost Model. In addition, a \$14.25 fee for a new application and a \$13 fee for an application for renewal was payable directly to a third-party contractor.

In 2013, the IRS conducted a biennial review of the PTIN user fee and issued a new Cost Model that estimated an increase of the PTIN user fee, to \$54. However, the IRS determined to keep the fee at \$50 for the next two years.

In 2015, the IRS conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the full cost of administering the PTIN program going forward was reduced from \$50 to \$33 per application or application for renewal, plus a \$17 fee per application or application for renewal payable directly to a third-party contractor. Final regulations (TD 9781) published in the *Federal Register* (81 FR 52766) on August 10, 2016, superseded and adopted temporary regulations (TD 9742) published in the *Federal Register* (80 FR 66792) on October 30, 2015, and established the \$33 annual user fee to apply for or renew a PTIN, plus \$17 per application or application for renewal payable directly to a third-party contractor.

In 2017, the IRS again conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the amount of the fee going forward should be reduced to \$31 per application or application for renewal, plus an amount payable directly to a third-party contractor. However, on June 1, 2017, before a notice of proposed rulemaking proposing to reduce the amount of the PTIN user fee was issued, the IRS was enjoined from charging a PTIN user fee.

In *Steele v. United States*, 260 F. Supp. 3d 52 (D.D.C. 2017), the United States District Court for the District of Columbia concluded that the Treasury Department and the IRS lacked the statutory authority to charge a PTIN user fee and enjoined the IRS from charging a PTIN user fee. See *Steele*, 2017 WL 3621747 (D.D.C. July 10, 2017) (final judgment and permanent injunction). The government filed an appeal and on March 1, 2019, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's decision and lifted the injunction against charging the PTIN user fee. See *Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019) (holding that a PTIN provides tax return preparers a specific benefit by allowing them to provide an identifying number that is not a social security number on returns they prepare and stating that the permissible amount of the fee would be the same regardless of whether the specific benefit was instead the ability to prepare tax returns for compensation). The case was remanded to the United States District Court for the District of Columbia to determine whether the fee amounts were excessive. *Id.* at 1068.

In 2019, the IRS again conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the amount of the fee going forward should be reduced to \$21 per application or application for renewal, plus a \$14.95 fee per application or application for renewal payable directly to a third-party contractor. Final regulations (TD 9903) published in the *Federal Register* (85 FR 43433) on July 17, 2020, adopted the proposed regulations (REG-117138-17) published in the *Federal Register* (85 FR 21126) on April 16, 2020, and established the \$21 annual user fee to apply for or renew a PTIN, plus \$14.95 per application or application for renewal payable directly to a third-party contractor.

In *Steele v. United States*, No. 1:14-cv-1523-RCL, --- F. Supp. 3d ---,

2023 WL 2139722 (Feb. 21, 2023), the United States District Court for the District of Columbia on remand considered whether the fee amounts were excessive under the IOAA. Explaining that while an agency may charge only the reasonable cost incurred to provide a service, or the value of the service to the recipient, whichever is less, the district court allowed that the activities charged for need only be "reasonably related" to the cost to the agency and the value to the recipient, and the amount may include both "direct and indirect costs" associated with the service provided. 2023 WL 2139722, at *7. The court further noted that where an activity produces an independent public benefit, the fee that would otherwise be charged must be reduced by that portion of the costs attributable to the public benefit. *Id.*

The district court concluded that the PTIN fees for fiscal years (FYs) 2011 through 2017 were excessive to the extent they were based on: (1) the activities already conceded by the government in the case;¹ (2) any compliance activities other than direct and indirect costs of investigating ghost preparers who do not list their PTINs on returns they prepared for compensation as required by law, handling complaints regarding improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft, and composing the data to refer to those specific types of complaints to other IRS business units; (3) any suitability activities; (4) any support activities, other than those for the provision of PTINs and maintenance of the PTIN database, that facilitated provision of an independent benefit to the agency and the public; and (5) any activities of the third-party contractor, other than those related to the issuance, renewal, and maintenance of PTINs, that facilitated provision of an independent benefit to the agency and the public. *Id.* at *19.

In accordance with the biennial review requirement in OMB Circular A-25 and

taking into account the district court's February 2023 memorandum opinion in *Steele*, the IRS has issued a new Cost Model that re-determines costs that the government continues to incur for providing PTINs and administering the PTIN program, and re-calculates the amount of the user fee as \$11 per application or application for renewal, plus a \$8.75 fee per application or application for renewal payable directly to a third-party contractor. The amount payable directly to the third-party contractor also takes into account certain costs that were addressed by the district court's February 2023 memorandum opinion in *Steele*. Subsequently, the IRS entered into a modified contract that allows the government to pay those costs rather than the individuals who apply for or renew a PTIN.

The government is authorized to charge a PTIN user fee under the IOAA because, in exchange for the fee, it provides a service by issuing and maintaining PTINs, which provide tax return preparers a specific benefit by allowing them to provide an identifying number that is not a social security number on returns and claims for refund and to prepare returns and claims for refund for compensation. OMB Circular A-25 states that user fees should be collected in advance of or simultaneously with the provision of a service. The PTIN user fee is collected when tax return preparers apply for or renew their PTINs during the application season, which begins annually in October.

Explanation of Provisions

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering PTIN applications and renewals. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of

¹The government previously conceded \$26,576,661, \$26,623,420, and \$25,685,247 for amounts collected in FY 2011, FY 2012, and FY 2013, respectively, which related to certain communications, compliance, Office of Professional Responsibility (OPR), and operations support activities; \$8,737,123 and \$9,010,458 for amounts collected in FY 2014 and FY 2015, respectively, which related to certain communications, Office of the Director, Strategy and Finance, suitability, compliance and complaint referrals, competency and standards, continuing education, OPR, enrolled agent and enrolled retirement plan agent department, and contractor processing activities; and \$6,904,345 and \$6,784,762 for amounts collected in FY 2016 and FY 2017, respectively, which related to certain communications, Office of the Director, Strategy and Finance, suitability, compliance and complaint referrals, OPR, enrolled agent and enrolled retirement plan agent department, and contractor processing activities.

Federal Accounting Standards and Other Pronouncements, as Amended (Current Handbook), available at https://files.fasab.gov/pdf/2022_20FASAB_20Handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Standards and Concepts*. SFFAS No. 4 establishes internal costing standards to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with SFFAS No. 4.

1. Cost Estimation of Direct Labor

The IRS uses various cost-measurement techniques to estimate the cost attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. To determine the labor and benefits cost incurred to provide the service of providing a PTIN, the IRS estimated the number of full-time employees required to conduct activities related to the costs of issuing and renewing PTINs. The number of full-time employees is based on both current employment numbers and future hiring estimates. When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost.

2. Overhead

Overhead is an indirect cost of operating an organization that is not specifically identifiable with an activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity. These costs can include:

- Financial, human resources, information technology, and general management and administrative.
- Rent and building.
- Procurement, other services, and consulting.
- Property, plant, and equipment.
- Publication services.
- Research, analytical, statistical, library and legal services.

To calculate the overhead allocable to a service, the IRS applies an overhead rate to the identified direct labor and benefits and other direct costs. The overhead rate is the ratio of the IRS's indirect labor, benefits, and non-labor costs of business divisions that do not interact with taxpayers to the labor and benefits costs of business divisions that interact with taxpayers. The IRS calculates an overhead rate annually. For the FY 2023 user fee review, an overhead rate of 62.5 percent was used.

3. Calculation of PTIN User Fee

The IRS used projections for FYs 2024 through 2026 to determine the direct and indirect costs associated with the PTIN program that are includible in the PTIN

user fee calculation taking into account the district court's February 2023 memorandum opinion in *Steele*. Direct costs are incurred by the Return Preparer Office and include staffing and contract-related costs for activities, processes, and procedures related to administering the PTIN program. Staffing costs included in the PTIN user fee calculation relate to the compliance activities of investigating ghost preparers; handling complaints regarding the improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft; and composing the data to refer those specific types of complaints to other IRS business units. The PTIN user fee also takes into account indirect costs for support activities related to the provision of PTINs and maintenance of the PTIN database. In accordance with *Steele*, the PTIN user fee calculation does not take into account compliance costs other than those described in this paragraph, costs incurred by the Suitability Department, support costs other than those described in this paragraph, and costs previously conceded by the government in *Steele*, as detailed earlier in this preamble.

The labor and benefits for the work performed related to the PTIN program is projected to be \$16,536,827 in total over FYs 2024 through 2026. In addition to labor and benefits and overhead expenses, the IRS projects incurring travel, training, and supplies costs of \$115,000 in each of FYs 2024 through 2026. The total labor and benefits, travel, training, and supplies, and overhead expenses projected are shown below:

Expense	FY 2024	FY 2025	FY 2026	Total
Labor and benefits	\$5,364,566	\$5,510,939	\$5,661,322	\$16,536,827
Travel, training, and supplies	\$115,000	\$115,000	\$115,000	\$345,000
Overhead (62.5 percent)	\$3,424,729	\$3,516,212	\$3,610,201	\$10,551,142

The total cost for FYs 2024 through 2026 are therefore projected to be \$27,432,969. The number of users is based on FY 2022 numbers adjusted by a projected increase in applications over the next three FYs. Dividing this total cost by the projected population of users for FYs

2024 through 2026 results in a cost per application of \$11 as shown below:

Total Costs	\$27,432,969
Number of Applications ÷	<u>2,542,665</u>
Cost Per Application	<u>\$10.79</u>

Taking into account the full amount of these costs, the amount of the PTIN user fee per application or application for renewal is \$11.

Costs related to a third-party contractor's activities for the issuance, renewal, and maintenance of PTINs, such as

processing applications and operating a call center, are included in the PTIN user fee calculation, in accordance with *Steele*, which will be set at \$8.75 per application or application for renewal, in addition to the amount charged by the government. The third-party contractor was chosen through a competitive bidding process. The amount of the third-party contractor portion may change in 2026 when the contract expires and will be re-computed.

Special Analyses

I. Regulatory Planning and Review

The OMB's Office of Information and Regulatory Analysis has determined that these regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these interim final regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can have a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to have a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to have a PTIN. The Treasury Department and the IRS estimate that approximately 847,555 individuals will apply annually for an initial or renewal PTIN. Although these regulations will likely affect a substantial number of small entities, the economic impact on those entities is not significant. These regulations will establish an \$11 fee per application or application for renewal (plus \$8.75 payable directly to the third-party

contractor), which is a reduction from the previously established fee and will not have a significant economic impact on a small entity. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These interim final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Good Cause

The annual PTIN application and renewal period for the 2024 filing season will begin shortly. It would be unnecessary and contrary to the public interest for the IRS to continue to charge the current, higher user fee pending public comment after the IRS has determined pursuant

to the biennial review conducted under OMB Circular A-25 that the PTIN user fee should be reduced going forward. To enable the reduced fee amount to be in effect for PTINs issued or renewed by tax return preparers preparing returns or claims for refund in 2024, the Treasury Department and the IRS find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). The Treasury Department and the IRS will consider public comments submitted in response to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register* and will promulgate a final rule after considering those comments.

VI. Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, this Treasury decision has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Jamie Song, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.11 is amended by revising paragraphs (b) and (d) to read as follows:

§300.11 Fee for obtaining a preparer tax identification number.

* * * * *

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is \$11 per year and is in addition to the fee charged by the contractor.

* * * * *

(d) *Applicability date.* This section applies to applications for or renewal of a preparer tax identification number filed on or after October 19, 2023.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: September 25, 2023.

Lily Batchelder,
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register September 29, 2023, 4:15 p.m., and published in the issue of the Federal Register for October 4, 2023, 88 FR 68456)

Part III

NOTE. This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules.

Rev. Proc. 2023-28

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Part 1
Introduction to Substitute Forms

Section 1.1 – Overview of Revenue Procedure 2023-28

1.1.1
Purpose

The purpose of this revenue procedure is to provide guidelines and general requirements for the development, printing, and approval of the 2023 substitute tax forms. Approval will be based on these guidelines. After review and approval, submitted forms will be accepted as substitutes for official IRS forms.

1.1.2
Unique Forms

Certain unique specialized forms require the use of other publications that supplement this publication. See *Part 4*.

1.1.3
Scope

The IRS accepts quality substitute tax forms that are consistent with the official forms and have no adverse impact on processing. The IRS Substitute Forms Program (the Program) administers the formal acceptance and processing of these forms nationwide. While this Program deals with paper documents, it also reviews for approval other processing and filing forms used in electronic filing.

Only those substitute forms that fully comply with these requirements are acceptable. This revenue procedure is updated as required to reflect pertinent tax year form changes and to meet processing and/or legislative requirements.

1.1.4
Forms Covered by This Revenue Procedure

The following types of forms are covered by this revenue procedure.

- IRS tax forms and their related schedules.
 - Worksheets as they appear in the instructions.
 - Applications for permission to file returns electronically and forms used as required documentation for electronically filed returns.
 - Powers of Attorney.
 - Over-the-counter estimated tax payment vouchers.
 - Forms and schedules relating to partnerships, exempt organizations, and employee plans.
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1.1.5
Forms Not Covered by This Revenue Procedure

The following types of forms are not covered by this revenue procedure. Refer to the publication for questions.

- W-2 and W-3. See Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
- W-2c and W-3c. See Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

- 941 and attached schedules. See Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
- 1096, 1097-BTC, 1098 series, 1099 series, 3921, 3922, 5498 series, W-2G, and 1042-S. See Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
- 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C. See Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.
- 8027. See Pub. 1239, Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.
- Forms 1040-ES (OCR) and 1041-ES (OCR), which may not be reproduced.
- Form 5500 series (for more information on these forms, go to the Department of Labor website at www.efast.dol.gov).
- Form 8717 bar-coded form requiring separate approval.
- Forms used internally by the IRS.
- State tax forms.
- Forms developed outside the IRS.

1.1.6 Other Information Not Covered by This Revenue Procedure

The following information is not covered by this revenue procedure.

- Requests for information or documentation initiated by the IRS.
- General Instructions and Specific Instructions (these are not reviewed by the Program).

Section 1.2 – IRS Contacts

1.2.1 Where To Send Substitute Forms

Send your substitute forms for **approval** to the following offices. Do not send forms with taxpayer data.

Form	Office and Address
5500	Check EFAST2 information at the Department of Labor website at www.efast.dol.gov .
8717	Robin.M.Joecken@irs.gov
Software developer vouchers (see Sections 2.3.7–2.3.9)	Internal Revenue Service Attn: Jason Lane 3211 S. Northpointe Dr. Santa Fe Bldg. Rm 3018 Fresno, CA 93725 Jason.L.Lane@irs.gov

Form	Office and Address
ACA Forms 1094-B, 1095-B, 1094-C, and 1095-C (for more information, see Pub. 5223), and Schedule K-1 forms must be emailed for scannability testing.	scrips@irs.gov
Schedule K-1 2-D bar-coded forms	For mailing addresses for sending Schedule K-1 2-D bar-coded forms for testing, see <i>Section 7.1.6</i> .
All others covered by this publication (see <i>Section 1.1.4</i>)	Internal Revenue Service Attn: Substitute Forms Program SE:W:CAR:MP:P:TP:TP 5000 Ellin Road, Mail Stop C6-110 Lanham, MD 20706 substituteforms@irs.gov

Section 1.3 – What’s New

1.3.1 What’s New

The following changes have been made to this year’s revenue procedure.

- **.01 Editorial changes.** We made editorial changes as needed and eliminated repetitive information.
- **.02 Forms 5300 and 5307 can no longer be submitted as substitute forms.** Forms 5300 and 5307 must be submitted electronically through Pay.gov. For more information about electronically submitting Forms 5300 and 5307, go to IRS.gov/Form5300 and IRS.gov/Form5307.
- **.03 Form 8905 is discontinued.** Form 8905 is discontinued and can no longer be filed with Forms 5300 and 5307.
- **.04 Section 7.3 – Guidelines for Substitute Image Character Recognition Forms added.** We added suggestions that may be used as a guideline for creating easily scanned substitute tax forms. If you choose to participate, please use the Form 1040 format provided in the new *Exhibit C* and *Exhibit D*.

Section 1.4 – Definitions

1.4.1 Substitute Form

A tax form (or related schedule) that differs in any way from the official version and is intended to replace the form that is printed and distributed by the IRS. This term also covers those approved substitute forms exhibited in this revenue procedure.

1.4.2 Printed/ Preprinted Form

A form produced using conventional printing processes or a printed form which has been reproduced by photocopying or a similar process.

1.4.3 Preprinted Pin- Fed Form	A printed form that has marginal perforations for use with automated and high-speed printing equipment.
1.4.4 Computer- Prepared Substitute Form	A preprinted form in which the taxpayer's tax entry information has been inserted by a computer, computer printer, or other computer-type equipment.
1.4.5 Computer- Generated Substitute Tax Return or Form	<p>A tax return or form that is entirely designed and printed using a computer printer on plain white paper. This return or form must conform to the physical layout of the corresponding IRS form, although the typeface may differ. The text should match the text on the officially printed form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis.</p> <p>Exception. All jurats (perjury statements) must be reproduced verbatim.</p>
1.4.6 Manually Prepared Form	A preprinted reproduced form in which the taxpayer's tax entry information is entered by an individual using a pen, a pencil, or other nonautomated equipment.
1.4.7 Graphics	Parts of a printed tax form that are not tax amount entries or required text. Examples of graphics are line numbers, captions, shadings, special indicators, borders, rules, and strokes created by typesetting, photographics, photocomposition, etc.
1.4.8 Acceptable Reproduced Form	A legible photocopy or an exact replica of an original form.
1.4.9 Supporting Statement (Supplemental Schedule)	<p>A document providing detailed information to support a line entry on an official or approved substitute form and filed with (attached to) a tax return.</p> <p>Note. A supporting statement is not a tax form and does not take the place of an official form.</p>
1.4.10 Specific Form Terms	The following specific terms are used throughout this revenue procedure in reference to all substitute forms: format, sequence, line reference, item caption, and data entry field.
1.4.11 Format	The overall physical arrangement and general layout of a substitute form.
1.4.12 Sequence	Sequence is an integral part of the total format requirement. The substitute form should show the same numeric and logical placement order of data as shown on the official form.

1.4.13 Line Reference	The line numbers, letters, or alphanumerics used to identify each captioned line on an official form. These line references are printed to the immediate left of each caption and/or data entry field.
1.4.14 Item Caption	The text on each line of a form, which identifies the data required.
1.4.15 Data Entry Field	Designated areas for the entry of data such as dollar amounts, quantities, responses, and checkboxes.
1.4.16 Advance Draft	A draft version of a new or revised form may be posted to the IRS website (IRS.gov/DraftForms) for information purposes. Substitute forms may be submitted based on these advance drafts, but any submitter that receives forms approval based on these early drafts is responsible for monitoring and revising forms to reflect any revisions in the final forms provided by the IRS.
1.4.17 Approval	Generally, approval could be in writing or assumed after 20 business days from our receipt for forms that have not been substantially changed by the IRS. This does not apply to newly created or substantially revised IRS forms. However, the Program reserves the right to notify vendors of any inaccuracies even after 20 business days have lapsed.
1.4.18 National Association of Computerized Tax Processors (NACTP)	The National Association of Computerized Tax Processors (NACTP) is a nonprofit association that represents tax processing software and hardware developers, electronic filing processors, tax form publishers, tax processing service bureaus, and payroll processors. The association promotes standards in tax processing to advance efficient and effective tax filing. For more information, see NACTP.org.
Section 1.5 – Agreement	
1.5.1 Important Stipulation of This Revenue Procedure	<p>Any person or company who uses substitute forms and makes all or part of the changes specified in this revenue procedure agrees to the following stipulations.</p> <ul style="list-style-type: none"> • The IRS presumes that any required changes are made in accordance with these procedures and will not be disruptive to the processing of the tax return. • Should any of the changes be disruptive to the IRS’s processing of the tax return, the person or company agrees to accept the determination of the IRS as to whether the form may continue to be filed. • The person or company agrees to work with the IRS in correcting noted deficiencies. Notification of deficiencies may be made by any combination of letter, email, or phone contact and may include the request for the resubmission of unacceptable forms.

1.5.2 Response Policy and Stipulations

The Program will email confirmation of receipt of your forms submission, if possible. Even if you do not receive emailed confirmation of receipt, you will receive an emailed “submission receipt,” which will provide feedback on your submission. If the Program anticipates problems in completing the review of your submission within the 20-business-day period, the Program will send an interim email notifying you of the extended period for review.

Once the substitute forms have been approved by the Program, you can release them after the final versions of the forms have been issued by the IRS. Before releasing the forms, you are responsible for updating forms approved as draft and for making form changes requested.

The policy has the following stipulations.

- This 20-business-day policy applies to electronic submissions only. It does not apply to substitute submissions mailed to the Program.
- The policy applies to submissions of 15 (optimal) or fewer items and submissions containing 75 pages or less. Submissions of more than 15 items may require additional review time.
- If you send a large number of submissions within a short period of time, processing may be delayed.
- Delays in processing could occur if the Program finds significant errors in your submission or has experienced an increase in submissions. The Program will send you an interim email in this case.
- Any anticipated problems in processing your submission within the 20-business-day period will generate an interim email on or about the 15th business day.
- If any significant inaccuracies are discovered after the 20-business-day period, the Program reserves the right to inform you and will require that changes be made to correct the inaccuracies.
- The policy does not apply to substantially revised forms or to new forms created by the IRS for which you have already made an initial submission.

Part 2 General Guidelines for Submissions and Approvals

Section 2.1 – General Specifications for Approval

2.1.1 Overview

If you produce any substitute tax forms that fully comply or follow the changes specifically outlined by the Program, then you can generate your own substitute forms without further approval. Also, if your substitutes have received approval in the past, and there are no substantial formatting or text changes for the tax year, then changes can be made without additional approval. If your changes are more extensive, you must get IRS approval before using substitute forms. More extensive changes include different font style, decreasing or increasing the font size of caption titles, adjusting or omitting format/layout elements, changing page orientation, and repositioning line items, tables, and legends.

2.1.2 Email Submissions

The Program accepts submissions of substitute forms for review and approval via email. The email address is substituteforms@irs.gov. Include the term “PDF Submissions” on the subject line.

Follow these guidelines.

- The emailed submission should include all the forms you wish to submit in one Portable Document Format (PDF) file. Do not email or attach each form individually.
- The emailed submission should include a maximum of 3 PDF files to include a checksheet, a cover letter or accompanying statement, and a single PDF file that includes all of the forms listed on your checksheet, cover letter, or accompanying statement.
- A submission should contain a maximum of 15 forms.
- An approval checksheet listing the forms you are submitting should always be included in the PDF file along with the forms. Excluding the checksheet can slow the reviewing process down, which can result in a delayed response to your submission. See a sample checksheet in *Exhibit B*.
- Optimize PDF files before submitting.
- The maximum allowable email attachment is 2.5 megabytes.
- The Program accepts zip files.
- To alleviate delays during the peak time of September through December, submit advance draft forms as early as possible.

If the guidelines are not followed, you may need to resubmit.

Emailing PDF submissions will not expedite review and approval. Submitting your substitute forms package via email is the preferred and suggested method for submitting forms for review. If, for some reason, you are not able to email your submission(s), you can mail your submission(s) to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP:TP
5000 Ellin Road, Mail Stop C6-110
Lanham, MD 20706

2.1.3 Expediting the Process

Follow these basic guidelines for expediting the process.

- Always include a checksheet for the Program’s response.
- Include an accompanying statement identifying most, if not all, of the deviations your substitute forms may have from the official IRS versions.
- Follow the guidance in this publication for general substitute form guidelines. Follow the guidance in specialized publications produced by the Program for other specific forms.
- To spread out the workload, send in draft versions of substitute forms when they are posted. **Note.** Be sure to make any changes to approved drafts before releasing final versions.

**2.1.4
Schedules**

Some schedules are considered to be an integral part of a complete tax return and must be submitted as part of the form. Other schedules may be submitted separately and do not need to be included with the tax form.

**2.1.5
Examples of Schedules That
Must Be Submitted With
the Return**

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is an example of this situation. Its Schedules A through U have pages numbered as part of the basic return. For Form 706 to be considered for approval, the entire form, including Schedules A through U, as well as Schedule PC, must be submitted.

**2.1.6
Examples of Schedules
That Can Be Submitted
Separately**

Schedules C, D, and E for Form 1040 or 1040-SR are examples of schedules that can be submitted separately. Although printed by the IRS as a supplement to Form 1040 or 1040-SR, these schedules are not required to be submitted for approval with Form 1040 or 1040-SR. These schedules may be separated from Form 1040 or 1040-SR and submitted as substitute forms.

**2.1.7
Use and Distribution of
Unapproved Forms**

The IRS is continuing a program to identify and contact tax return preparers, forms developers, and software publishers who use or distribute unapproved forms that do not conform to this revenue procedure. The use of unapproved forms hinders the processing of the returns.

Section 2.2 – Highlights of Permitted Changes and Requirements

**2.2.1
Methods of Reproducing
IRS Forms**

There are methods of reproducing IRS printed tax forms suitable for use as substitutes without prior approval.

- You can photocopy most tax forms and use them instead of the official ones. The entire substitute form, including entries, must be legible.
 - You can reproduce any current tax form as cut sheets, snap sets, and marginally punched, pinned forms as long as you use an official IRS version as the master copy.
 - You can reproduce a form that requires a signature as a valid substitute form. Many tax forms (including returns) have a taxpayer signature requirement as part of the form layout. The jurat/perjury statement/ signature line areas must be retained and worded exactly as on the official form. The requirement for a signature, by itself, does not prohibit a tax form from being properly computer generated.
-

Section 2.3 – Vouchers

**2.3.1
Overview**

All payment vouchers (Forms 940-V, 941-V, 943-V, 944-V, 945-V, 1040-ES, 1040-V, 1041-V, and 2290-V) must be reproduced in conjunction with their forms. Substitute vouchers must be the same size as the officially printed vouchers. Vouchers that are prepared for printing on a laser printer may include a scan line.

2.3.2 Scan Line Specifications

	NNNNNNNN	AA	XXXX	NN	N	NNNNNN	NNN
Item:	A	B	C	D	E	F	G
A.	Social Security Number/Employer Identification Number/Individual Taxpayer Identification Number/Adoption Taxpayer Identification Number (SSN/EIN/ ITIN/ATIN) has 9 numeric (N) spaces.						
B.	Check Digits have 2 alpha (A) spaces.						
C.	Name Control has 4 alphanumeric (X) spaces.						
D.	Master File Tax (MFT) Code has 2 numeric (N) spaces (see <i>Section 2.3.3</i>).						
E.	Taxpayer Identification Number (TIN) Type has 1 numeric (N) space (see <i>Section 2.3.4</i>).						
F.	Tax Period has 6 numeric (N) spaces in year/month format (YYYYMM).						
G.	Transaction Code has 3 numeric (N) spaces.						

2.3.3 MFT Code

Code Number for Forms:

- 1040 (family) – 30,
 - 940 – 10,
 - 941 – 01,
 - 943 – 11,
 - 944 – 14,
 - 945 – 16,
 - 1041-V – 05,
 - 2290 – 60, and
 - 4868 – 30.
-

2.3.4 TIN Type

Type Number for:

- Form 1040 (family) and Form 4868 – 0; and
 - Forms 940, 941, 943, 944, 945, 1041-V, and 2290 – 2.
-

2.3.5 Voucher Size

The voucher size must be exactly 8.0" x 3.25" (Forms 1040-ES and 1041-ES must be 7.625" x 3.0"). The document scan line must be vertically positioned 0.25 inch from the bottom of the scan line to the bottom of the voucher. The last character on the right of the scan line must be placed 3.5 inches from the right leading edge of the document. The minimum required horizontal clear space between characters is 0.014 inch. The line to be scanned must have a clear band 0.25 inch in height from top to bottom of the scan line, and from border to border of the document. "Clear band" means no printing except for dropout ink.

2.3.6 Print and Paper Weight

Vouchers must be imaged in black ink using OCR A, OCR B, or Courier 10. These fonts may not be mixed in the scan line. The horizontal character pitch is 10 CPI. The preferred paper weight is 20 to 24 pound OCR bond.

2.3.7 Specifications for Software Developers

Certain vouchers may be reproduced for use in the IRS lockbox system. These include the 1040-V, 1040-ES, 1041-V, the 94X family, and 2290 vouchers. Software developers must follow these specific guidelines to produce scannable vouchers strictly for lockbox purposes. Also see *Exhibit A*.

- The total depth must be 3.25 inches.
- The scan line must be 0.5 inch from the bottom edge and 1.75 inches from the left edge of the voucher and left justified.
- Software developers' vouchers must be 8.5 inches wide (instead of 8 inches with a cut line). Therefore, no vertical cut line is required.
- Scan line positioning must be exact.
- Do not use the over-the-counter format voucher and add the scan line to it.
- All scanned data must be in 12-point OCR A font.
- The 4-digit NACTP ID code or IRS source code should be placed under the payment indicator arrow.
- Windowed envelopes must not display the scan line in order to avoid disclosure and privacy issues.

Note. All software developers must ensure that their software uses OCR A font so taxpayers will be able to print the vouchers in the correct font.

2.3.8 Specific Line Positions

Follow these line specifications for entering taxpayer data in the lockbox vouchers.

	Start Row	Start Column	Width	End Column
Line Specifications for Taxpayer Data:				
Taxpayer Name	56	6	36	41
Taxpayer Address, Apt.	57	6	36	41
Taxpayer City, State, ZIP	58	6	36	41
Foreign Country Name	59	6	36	41
Foreign Province/County	60	6	17	22
Foreign Postal Code	60	26	16	41
Line Specifications for Mail To Data:				
Mail Name	56	43	38	80
Mail Address	57	43	38	80
Mail City, State, ZIP	58	43	38	80
Line Specifications for:				
Scan Line	63	26	n/a	n/a

2.3.9 How To Get Approval

Send an approval sheet with each form type for IRS signature to Jason Lane at Jason.L.Lane@irs.gov. You should include in the email an example of each type of voucher the site will be testing. **Note.** Do not mail any test vouchers to Jason Lane.

You are required to send 25 voucher samples of each form in PDF format by December 8, 2023. You should email the test vouchers to raul.t.mariduena@jpmorgan.com. You can also print the vouchers and send them to his mailing address at:

JP Morgan Chase
Attn: Raul Mariduena
830 Tyvola Road, Suite 114
Charlotte, NC 28217

For further information, contact Jason Lane at Jason.L.Lane@irs.gov, or at 559-550-8740 (not toll free).

Section 2.4 – Restrictions on Changes

2.4.1 What You Cannot Do to Forms Suitable for Substitute Tax Forms

You cannot, without prior IRS approval, change any IRS tax form or use your own (nonapproved) versions including graphics, unless specifically permitted by this revenue procedure. See *Sections 2.5.7 through 2.5.11*.

You cannot adjust any of the graphics on Form 1040 or 1040-SR (except in those areas specified in *Part 5* of this revenue procedure) without prior approval from the Program.

You cannot rearrange or redistribute data entry fields, and/or allow data entry fields to flow from one page onto the next (that is, each page of a substitute form must contain the exact number of data entry fields as there are on the official IRS form). The order of information on the substitute form must be identical to the IRS version of the form. Publications for specific substitute forms will state allowances for those respective forms.

Note. The 20-business-day turnaround policy may not apply to extensive changes.

Section 2.5 – Guidelines for Obtaining IRS Approval

2.5.1 Basic Requirements

Preparers who submit substitute privately designed, privately printed, computer-generated, or computer-prepared tax forms must develop these substitutes using the guidelines established in this part. These forms, unless there is an exception outlined by this revenue procedure, must be approved by the IRS before being filed.

2.5.2 Conditional Approval Based on Advance Drafts

The IRS cannot grant final approval of your substitute form until the official form has been published. However, the IRS posts advance draft forms on its website at IRS.gov/DraftForms.

Submission of proposed substitutes of these advance draft forms is encouraged, and conditional approval will be granted based solely on these early drafts. These advance drafts are subject to significant change before forms are finalized. If these advance drafts are used as the basis for your

substitute forms, you will be responsible for subsequently updating your final forms to agree with the final official version. These revisions need not be resubmitted for further approval.

Note. Approval of forms based on advance drafts will not be granted after the final version of an official form is published.

2.5.3 Submission Procedures

Follow these general guidelines when submitting substitute forms for approval.

- Any alteration of forms must be within the limits acceptable to the IRS. It is possible that, from one filing period to another, a change in law or a change in internal need (processing, audit, compliance, etc.) may change the allowable limits for the alteration of the official form.
- When approval of any substitute form (other than those exceptions specified in *Part I, Section 1.2*) is requested, a sample of the proposed substitute form should be emailed for consideration to the Program at the address shown in *Section 1.2.1*.
- Schedules and forms (for example, Forms 3468, 4136, etc.) that can be used with more than one type of return (for example, Forms 1040, 1040-SR, 1041, 1120, etc.) should be submitted only once for approval, without regard to the number of different tax returns with which they may be associated. Also, all pages of multi-page forms or returns should be submitted in the same package.

2.5.4 Approving Offices

Because only the Program is authorized to approve substitute forms, unnecessary delays may occur if forms are sent to the wrong office. You may receive an interim letter about the delay. The Program may then coordinate the response with the originator responsible for revising that particular form. Such coordination may include allowing the originator to officially approve the form. No IRS office is authorized to allow deviations from this revenue procedure.

2.5.5 IRS Review of Software Programs, etc.

The IRS does not review or approve the logic of specific software programs, nor does the IRS confirm the calculations on the forms produced by these programs. The accuracy of the program remains the responsibility of the software package developer, distributor, or user.

The Program is primarily concerned with the pre-filing quality review of the final forms that are expected to be processed by IRS field offices. For this purpose, you should submit forms without including any taxpayer information such as names, addresses, monetary amounts, etc.

If the software used is programmed to produce copies with populated fields, then you must use dummy information. This will allow the Program to review and provide feedback or approval. Vendors should use “0” for all number values and “X” for any information that requires alpha characters.

2.5.6 When To Send Proposed Substitutes

Proposed substitutes, which are required to be submitted per this revenue procedure, should be sent as much in advance of the filing period as possible. This is to allow adequate time for analysis and response.

2.5.7 Accompanying Statement

When submitting sample substitutes, you should include an accompanying statement that lists each form number and its changes from the official form (position, arrangement, appearance, line

numbers, additions, deletions, etc.). With each of the items, you should include a detailed reason for the change.

When requesting approval, include a checklist. Checksheets expedite the approval process. The checklist may look like the example in *Exhibit B* displayed in the back of this procedure or may be one of your own design. Include your email address on the checklist.

2.5.8 Approval/ Nonapproval Notice

The Program will email the checklist or an approval letter to the originator, unless:

- The requester has asked for a formal letter, or
- Significant corrections to the submitted forms are required.

Notice of approval may impose qualifications before using the substitutes. Notices of unapproved forms may specify the changes required for approval and require resubmission of the form(s) in question. When appropriate, you will be contacted by telephone.

2.5.9 Duration of Approval

Most signature tax returns and many of their schedules and related forms have the tax year printed in the upper right corner. Approvals for these annual forms are usually good for 1 calendar year (January through December of the year of filing). Quarterly tax forms in the 94X series and Form 720 require approval for any quarter in which the form has been revised.

Because changes are usually made to an annual form every year, each new filing season generally requires a new submission of a substitute form. Very rarely is updating the preprinted year the only change made to an annual form. However, if no significant content, formatting, or layout changes were made to a tax form, then review and approval received for the prior tax year can be carried over into the current tax year.

2.5.10 Limited Continued Use of an Approved Change

Limited changes approved for one tax year may be allowed for the same form in the following tax year. Examples are the use of abbreviated words, revised form spacing, compressed text lines, shortened captions, etc., which do not change the integrity of lines or text on the official forms.

If the vendor or filer makes substantial changes to the form, new substitutes must be submitted for approval. If the vendor or filer makes only minor editorial changes to the form, or makes any changes that mirror changes the IRS makes to the form's official version, the new substitute does not need to be submitted for approval. It is the responsibility of each vendor who has been granted permission to produce substitute forms to monitor and revise forms to mirror any revisions to the official forms made by the IRS. If there are any questions, contact the Program.

2.5.11 When Approval Is Not Required

If you received approval for a specific change on a form last year, you may make the same change this year if the item is still present on the official form.

- The new substitute form does not have to be submitted to the IRS and approval based on that change is not required.
- However, the new substitute form must conform to the official current year IRS form in other respects, such as date, Office of Management and Budget (OMB) approval number, attachment sequence number, Paperwork Reduction Act Notice statement, arrangement, item caption, line number, line reference, data sequence, etc.

- The new substitute form must also comply with changes to the guidelines in this revenue procedure. This procedure may have eliminated, added to, or otherwise changed the guideline(s) that affected the change approved in the prior year.
- An approved change is authorized only for the period from a prior tax year substitute form to a current tax year substitute form.

Exception. Forms with temporary, limited, or interim approvals (or with approvals that state a change is not allowed in any other tax year) are subject to review in subsequent years.

2.5.12 Required Copies

Generally, you must send us one copy of each form being submitted for approval. However, if you are producing forms for different computer platforms (for example, Microsoft vs. Apple), different tax preparation software (for example, TurboTax® vs. TaxSlayer®), or different types of printers (for example, inkjet vs. impact), and these forms differ **significantly** in appearance, submit one copy for each type of platform, tax preparation software, or printer.

2.5.13 Requestor's Responsibility

Following receipt of an initial approval for a substitute forms package or a software output program to print substitute forms, it is the responsibility of the originator (designer or distributor) to provide client firms or individuals with forms that meet the IRS's requirements for continuing acceptability. Examples of this responsibility include:

- Using the prescribed print paper, font size, legibility, state tax data deletion, etc.; and
- Informing all users of substitute forms of the legal requirements of the Paperwork Reduction Act Notice, which is generally found in the instructions for the official IRS forms.

2.5.14 Source Code

The Program will assign a unique source code to each firm that submits substitute forms for approval. This source code will be a permanent identifier that must be used on every submission by a particular firm.

The source code consists of three alpha characters and should generally be printed under or to the left of the "Paperwork Reduction Act" statement. Vendors must ensure that the source code is not printed too close to or within the left or bottom 0.5 inch margin to avoid the source code from being cut off during printing.

Section 2.6 – Office of Management and Budget (OMB) Requirements for All Substitute Forms

2.6.1 OMB Requirements for All Substitute Forms

There are legal requirements of the Paperwork Reduction Act of 1995 (the Act). Public Law 104-13 requires the following.

- OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in the upper right corner) the OMB number, if assigned.
- Each IRS form (or its instructions) states why the IRS needs the information, how it will be used, and whether or not the information is required to be furnished to the IRS.

This information must be provided to every user of official or substitute IRS forms or instructions.

2.6.2
Application of the
Paperwork Reduction Act

On forms that have been assigned OMB numbers:

- All substitute forms must contain in the upper right corner the OMB number that is on the official form, and
 - The required format is: OMB No. 1545-XXXX (preferred) or OMB # 1545-XXXX (acceptable).
-

2.6.3
Required Explanation to
Users

You must inform the users of your substitute forms of the IRS use and collection requirements stated in the instructions for official IRS forms.

- If you provide your users or customers with the official IRS instructions, each form must retain either the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice), or a reference to it as the IRS does on the official forms (usually in the lower left corner of the forms).
- This notice reads, in part, “We ask for tax return information to carry out the tax laws of the United States. . . .”

Note. If no IRS instructions are provided to users of your forms, the exact text of the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice) must be furnished separately or on the form.

2.6.4
Finding the OMB Number
and Paperwork Reduction
Act Notice

The OMB number and the Paperwork Reduction Act Notice, or references to it, may be found printed on an official form (or its instructions). The number and the notice are included on the official paper format and in other formats produced by the IRS.

Part 3
Physical Aspects and Requirements

Section 3.1 – General Guidelines for Substitute Forms

3.1.1
General Information

The official form is the standard. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. To obtain the most frequently used tax forms, go to [IRS.gov/Forms](https://www.irs.gov/Forms).

3.1.2
Design

Each form must follow the design of the official form as to format arrangement, item caption, line numbers, line references, and sequence.

3.1.3 State Tax Information Prohibited

Generally, state tax information must not appear on the federal tax return, associated form, or schedule that is filed with the IRS. Exceptions occur when amounts are claimed on, or required by, the federal return (for example, state and local income taxes on Schedule A (Form 1040)).

3.1.4 Vertical Alignment of Amount Fields

IF a form is to be...	THEN...
manually prepared and the official IRS form still has a separate cents entry field	<ol style="list-style-type: none">1. the entry column must have a vertical line or some type of indicator in the amount field to separate dollars from cents, and2. the cents column must be at least 0.3 inch wide.
computer generated	<ol style="list-style-type: none">1. vertically align the amount entry fields where possible, and2. use one of the following amount formats.<ol style="list-style-type: none">a) 0,000,000.b) 0,000,000.00.
computer prepared	<ol style="list-style-type: none">1. you may remove the vertical line in the amount field that separates dollars from cents, and2. use one of the following amount formats.<ol style="list-style-type: none">a) 0,000,000.b) 0,000,000.00.

3.1.5 Attachment Sequence Number

Many individual income tax forms have a required “attachment sequence number” located just below the year designation in the upper right corner of the form. The IRS uses this number to indicate the order in which forms are to be attached to the tax return for processing. Some of the attachment sequence numbers may change from year to year.

The following apply to computer-prepared forms.

- The sequence number may be printed in no less than 12-point boldface type and centered below the form’s year designation.
- The sequence number may also be placed following the year designation for the tax form and separated with an asterisk.
- The actual number may be printed without labeling it the “Attachment Sequence Number.”

3.1.6 Assembly of Forms

When developing software or forms for use by others, inform your customers/clients that the order in which the forms are arranged may affect the processing of the package. A return must be arranged in the order indicated below.

IF the form is...	THEN the sequence is...
1040 or 1040-SR	<ul style="list-style-type: none">• Form 1040 or 1040-SR, and schedules and forms in attachment sequence number order.
any other tax return (Form 1120, 1120-S, 1065, 1041, etc.)	<ul style="list-style-type: none">• the tax returns, directly associated schedules (Schedule D, etc.), directly associated forms, additional schedules in alphabetical order, and additional forms in numerical order.

Supporting statements should then follow in the same sequence as the forms they support. Additional information required should be attached last.

In this way, the forms are received in the order in which they must be processed. If you do not send returns to the IRS in order, processing may be delayed.

3.1.7 Paid Preparer's Information and Signature Area

On Forms 1040, 1040-SR, and 1120, and any other applicable tax forms, the "Paid Preparer Use Only" area may not be rearranged or relocated. You may, however, add three extra lines to the paid preparer's address area, and remove the horizontal rules in that area without prior approval.

3.1.8 Some Common Reasons for Requiring Changes to Substitute Forms

Some reasons that substitute form submissions may require changes include the following.

- Shading areas incorrectly.
 - Failing to include a reference to the location of the Paperwork Reduction Act Notice.
 - Not including parentheses for losses.
 - Not including "Attach Statement" when appropriate.
 - Including line references or entry spaces that do not match the official form.
 - Printing text that is different from the official form.
 - Altering the jurat (perjury statement).
 - Having an incorrect OMB number.
 - Including the IRS catalog number (Cat. No.) on the form.
 - Failing to include preprinted amounts in entry fields.
 - Missing IRS source code or NACTP software ID.
 - Missing 3-letter FFF code on paper Form 1040 from tax software companies that participate in the IRS Free File Program.
 - Incorrect dimensions.
-

Section 3.2 – Paper

3.2.1 Paper Content

The paper must be:

- Chemical wood writing paper that is equal to or better than the quality used for the official form,
- At least 18 pound (17" x 22", 500 sheets), or
- At least 50 pound offset book (25" x 38", 500 sheets).

**3.2.2
Paper With Chemical
Transfer Properties**

There are several kinds of paper prohibited for substitute forms. These are:

1. Carbon-bonded paper, and
2. Chemical transfer paper except when the following specifications are met.
 - a. Each ply within the chemical transfer set of forms must be labeled.
 - b. Only the top ply (ply one and white in color), the one that contains chemical on the back only (coated back), may be filed with the IRS.

Example. A set containing three plies would be constructed as follows: ply one (coated back), “Federal Return, File with IRS”; ply two (coated front and back), “Taxpayer’s copy”; and ply three (coated front), “Preparer’s copy.”

The file designation, “Federal Return, File with IRS” for ply one, must be printed in the bottom right margin (just below the last line of the form) in 12-point boldface type.

It is not mandatory, but recommended, that the file designation “Federal Return, File with IRS” be printed in a contrasting ink for visual emphasis.

**3.2.3
Paper and Ink Color**

It is preferred that the color and opacity of paper substantially duplicate that of the original form. This means that your substitute must be printed in black ink and may be on white paper or on the colored paper the IRS form is printed on. Form 1040 or 1040-SR substitute reproductions may be in black ink without the colored shading. The only exception to this rule is Form 1041-ES, which should be printed with a PMS 100 yellow shading in the color-screened area. This is necessary to assist us in expeditiously separating this form from the very similar Form 1040-ES.

**3.2.4
Page Size**

Substitute or reproduced forms and computer-prepared/-generated substitutes may be the same size as the official form or they may be the standard commercial size (8.5" x 11"). The thickness of the stock cannot be less than 0.003 inch.

Section 3.3 – Printing

**3.3.1
Printing Medium**

The private printing of all substitute tax forms must be by conventional printing processes, photocopying, computer graphics, or similar reproduction processes.

**3.3.2
Legibility**

All forms must have a high standard of legibility as to printing, reproduction, and fill-in matter. Entries of taxpayer data may be no smaller than 8 points. The IRS reserves the right to reject those with poor legibility. The ink and printing method used must ensure that no part of a form (including text, graphics, data entries, etc.) develops “smears” or similar quality deterioration. This standard must be followed for any subsequent copies or reproductions made from an approved master substitute form, either during preparation or during IRS processing.

3.3.3 Type Font	Many federal tax forms are printed using Helvetica as the basic type font. It is preferred that you use this type font when composing substitute forms.
3.3.4 Print Spacing	Substitute forms should be printed using a 6 lines/inch vertical print option. They should also be printed horizontally in 10-pitch pica (that is, 10 print characters per inch) or 12-pitch elite (that is, 12 print positions per inch).
3.3.5 Image Size	The image size of a printed substitute form should be as close as possible to that of the official form. You may omit any text on both computer-prepared and computer-generated forms that is solely instructional.
3.3.6 Title Area Changes	To allow a large top margin for marginal printing and more lines per page, the title line(s) for all substitute forms (not including the form's year designation and sequence number, when present) may be photographically reduced by 40% or reset as one line of type. When reset as one line, the type size may be no smaller than 14 points. You may omit "Department of the Treasury—Internal Revenue Service" and all references to instructions in the form's title area.
3.3.7 Remove Government Publishing Office Symbol and IRS Catalog Number	When privately printing substitute tax forms, the Government Publishing Office (GPO) symbol and/or jacket number must be removed. In the same place using the same type size, print the EIN of the printer or designer, or the IRS-assigned source code. (Preferably, this last number should be printed in the lower left area of the first page of each form.) Also, remove the IRS catalog number (Cat. No.) and the recycle symbol if the substitute is not produced on recycled paper.
3.3.8 Printing Single- Page Forms	Substitute single-page forms should be reproduced the same as IRS single-page forms. Other forms or schedules should not be printed on the back or on blank portions of a single-page form. However, printing instructions on the back or on blank portions of a single-page form is acceptable.
3.3.9 Photocopy Equipment	The IRS does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms. Photocopies of forms must be entirely legible and satisfy the conditions stated in this and other revenue procedures.
3.3.10 Reproductions	Reproductions of official forms and substitute forms that do not meet the requirements of this revenue procedure may not be filed instead of the official forms. Illegible photocopies are subject to being returned to the filer for resubmission of legible copies.
3.3.11 Removal of Instructions	<p>Generally, you may remove references to instructions. No prior approval is needed. However, in some instances, you may be requested to include references to instructions.</p> <p>Exception. The words "For Paperwork Reduction Act Notice, see instructions" must be retained, or a similar statement indicating the location of the Notice must be provided on each form.</p>

Section 3.4 – Margins

3.4.1 Margin Size

The format of a reproduced tax form when printed on the page must have margins on all sides at least as large as the margins on the official form. This allows room for IRS employees to make necessary entries on the form during processing.

- A 0.5 inch to 0.25 inch margin must be maintained across the top, bottom, and both sides of all substitute forms.
 - The marginal, perforated strips containing pin-fed holes must be removed from all forms prior to filing with the IRS.
-

3.4.2 Marginal Printing

Prior approval is not required for the marginal printing allowed when printed on an official form or on a photocopy of an official form.

- With the exception of the actual tax return forms (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical margin and in the left half of the bottom margin.
 - Printing is never allowed in the top right margin of the tax return form (for example, Forms 1040, 1040-SR, 1120, 940, 941, etc.). The IRS uses this area to imprint a Document Locator Number for each return. There are no exceptions to this requirement.
-

Section 3.5 – Miscellaneous Information for Substitute Forms

3.5.1 Filing Substitute Forms

To be acceptable for filing, a substitute form must print out in a format that will allow the filer to follow the same instructions that accompany official forms. The form must be legible, must be on the appropriately sized paper, and must include a jurat (perjury statement) where one appears on the published form.

3.5.2 Caution to Software Publishers

The IRS has received returns produced by software packages with approved output where either the form heading was altered or the lines were spaced irregularly. This produces an illegible or unrecognizable return or a return with the wrong number of pages. While many of these problems are caused by individual printer differences, they may delay input of return data and, in some cases, generate correspondence to the taxpayer. Therefore, in the instructions to the purchasers of your product, both individual and professional, stress that their returns will be processed more efficiently if they are properly formatted. This includes:

- Having the correct form numbers, six-digit form identifying numbers, and titles at the top of the return; and
 - Submitting the same number of pages as if the form were an official IRS form with the line items on the proper pages.
-

3.5.3 Caution to Producers of Software Packages

If you are producing a software package that generates name and address data onto the tax return, do not, under any circumstances, program either the IRS preprinted check digits or a practitioner-derived name control to appear on any return prepared and filed with the IRS.

3.5.4 Programming to Print Forms

Whenever applicable:

- Use only the following label information format for single filers: JOHN Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000;
- Use only the following label information format for joint filers: JOHN Q. DOE MARY Q. DOE 000 OAK DRIVE HOMETOWN, STATE 00000; and
- Use “0” for number values and “X” for alpha characters entered in data entry fields as dummy copy.

Part 4 Additional Resources

Section 4.1 – Guidance From Other Revenue Procedures

4.1.1 General

The IRS publications listed below provide guidance for substitute tax forms not covered in this revenue procedure. These publications are available on the IRS website. Use the publication number listed below to search for the requested document.

- Pub. 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
 - Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
 - Pub. 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.
 - Pub. 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.
 - Pub. 5223, General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C.
-

Section 4.2 – Electronic Tax Products

4.2.1 The IRS Website

Copies of tax forms and their instructions, publications, fillable forms, and prior year forms and publications may be found on the IRS website at [IRS.gov/Forms](https://www.irs.gov/Forms).

Draft forms and instructions may be found at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms).

Other tax-related information may be found at [IRS.gov](https://www.irs.gov).

**4.2.2
System Requirements
and Ordering Forms and
Instructions**

For system requirements, contact the National Technical Information Service (NTIS) at NTIS.gov. Prices are subject to change.

You can order IRS forms and other tax material at [IRS.gov/OrderForms](https://www.irs.gov/OrderForms).

**Part 5
Requirements for Specific Tax Returns**

Section 5.1 – Tax Returns (Forms 1040, 1040-SR, 1120, etc.)

**5.1.1
Acceptable Forms**

Tax return forms (such as Forms 1040, 1040-SR, and 1120) require a signature and establish tax liability. Computer-generated versions are acceptable under the following conditions.

- These substitute forms must be printed on plain white paper.
 - Substitute forms must conform to the physical layout of the corresponding IRS form although the typeface may differ. The text should match the text on the officially published form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis. **Caution.** All jurats (perjury statements) must be reproduced verbatim. No text can be added, deleted, or changed in meaning.
 - Various computer graphic print media such as laser printing, inkjet printing, etc., may be used to produce the substitute forms.
 - The substitute form must be the same number of pages and contain the same text on the lines as the official form.
 - All substitute forms must be submitted for approval prior to their original use. You do not need approval for a substitute form if its only change is the preprinted year and you had received a prior year approval letter. **Exception.** If the approval letter specifies a one-time exception for your form, the next year's form must be approved.
-

**5.1.2
Prohibited Forms**

The following are prohibited.

- Computer-generated tax forms (for example, Form 1040, 1040-SR, etc.) on lined or color-barred paper.
 - Tax forms that differ from the official IRS forms in a manner that makes them nonstandard or unable to process.
-

**5.1.3
Changes Permitted to Form
1040**

Certain changes (listed in *Section 5.2*) are permitted to the graphics of the form without prior approval, but these changes apply to only acceptable preprinted forms. Changes not requiring prior approval are good only for the annual filing period, which is the current tax year. Such changes are valid in subsequent years only if the official form does not change.

**5.1.4
Other Changes Not Listed**

All changes not listed in *Section 5.2* require approval from the IRS before the form can be filed.

Section 5.2 – Changes Permitted to Graphics (Form 1040 or 1040-SR)

5.2.1 Adjustments

You may make minor vertical and horizontal spacing adjustments to allow for computer or word processing printing. This includes widening the amount columns or tax entry areas if the adjustments comply with other provisions stated in revenue procedures. No prior approval is needed for these changes.

Schedules 1–3 cannot be combined for filing purposes. For the client copy of the return, the numbered schedules may be printed two to a page (for example, Schedule 3 below Schedule 2, if both are completed as part of the return). If numbered schedules are combined on the client copy, it must include a statement that it is “Not for Filing.”

5.2.2 Name and Address Area

The horizontal rules and instructions within the name and address area may be removed and the entire area left blank. No line or instruction can remain in the area. The heavy-ruled border (when present) that outlines the name, address area, and SSN must not be removed, relocated, expanded, or contracted.

5.2.3 Required Format

When the name and address area is left blank, the following format must be used when printing the taxpayer’s name and address.

- 1st name line (35 characters maximum).
 - 2nd name line (35 characters maximum).
 - In-care-of name line (35 characters maximum).
 - City, state (25 characters maximum), one blank character, and ZIP code.
-

5.2.4 Conventional Name and Address Data

When there is no in-care-of name line, the name and address will consist of only three lines (single filer) or four lines (joint filer).

Example of joint filer. Name and address (joint filer) with no in-care-of name line:

JOHN Q. DOE
MARY Q. DOE
000 ANYWHERE ST., APT. 000
ANYTOWN, STATE 00000

Example of in-care-of name line. Name and address (single filer) with in-care-of name line:

JOHN Q. DOE
C/O JOHN R. DOE
0000 SOMEWHERE AVE.
SAMETOWN, STATE 00000

5.2.5
SSN and EIN Area

The broken vertical lines separating the format arrangement of the SSN/EIN may be removed. When the vertical lines are removed, the SSN and EIN formats must be 000-00-0000 or 00-0000000, respectively.

5.2.6
Entering Cents

- You may remove the vertical rule that separates the dollars from the cents if it is still included on the official IRS form.
 - All entries in the amount column should have a decimal point following the whole dollar amounts whether or not the vertical line that separates the dollars from the cents is present.
 - You may omit printing the cents, but all amounts entered on the form must follow a consistent format. You are strongly urged to round off the figures to whole dollar amounts, following the official form instructions.
 - When several amounts are added together, the total should be rounded off after addition (that is, individual amounts should not be rounded off for computation purposes).
 - When printing money amounts, you must use one of the following formats: (a) 0,000,000; or (b) 0,000,000.00.
 - When there is no entry for a line, leave the line blank.
-

5.2.7
Changes to Lines

No prior approval is needed for the following changes (for use with computer-prepared forms only). Specific line numbers in the following headings may have changed due to tax law changes.

5.2.8
Dependents on Form 1040

The vertical lines separating columns (1) through (4) may be removed. The captions may be shortened to allow a one-line caption for each column.

5.2.9
Other Lines

Any other line with text that takes up two or more vertical lines may be compressed to one line by using contractions, etc., and by removing instructional references.

5.2.10
Form 1040 – Tax

You may change the line caption to read “Tax” and computer print the words “Total includes tax from” and either “Form(s) 8814” or “Form 4972” or “962 election.” If both forms are used, print both form numbers. This specific line number may have changed.

5.2.11
Color Screening

It is not necessary to duplicate the color screening used on the official form. A substitute Form 1040 or 1040-SR may be printed in black and white only with no color screening.

5.2.12
Other Changes Prohibited

No other changes to the Form 1040 or 1040-SR graphics are permitted without prior approval except for the removal of instructions and references to instructions.

Part 6
Format and Content of Substitute Returns

Section 6.1 – Acceptable Formats for Substitute Forms and Schedules

6.1.1
Exhibits and Use of
Acceptable Formats

Exhibit A is an acceptable format for Form 1040-ES.

- If your computer-generated Form 1040-ES appears exactly like *Exhibit A*, no prior authorization is needed.
 - You may computer-generate forms not shown here, but you must design them by following the manner and style discussed in *Part 3*.
 - Take care to observe the other requirements and conditions in this revenue procedure. The IRS encourages the submission of all proposed forms covered by this revenue procedure.
-

6.1.2
Instructions

The format of each substitute form or schedule must follow the format of the official form or schedule as to item captions, line references, line numbers, sequence, form arrangement and format, etc. Basically, try to make the form look like the official one, with readability and consistency being primary factors. You may use periods and/or other similar special characters to separate the various parts and sections of the form. Do not use alpha or numeric characters for these purposes. All line numbers and items must be printed even though an amount is not entered on the line.

6.1.3
Line Numbers

When a line on an official form is designated by a number or a letter, that designation (reference code) must be used on a substitute form. The reference code must be printed to the left of the text of each line and immediately preceding the data entry field, even if no reference code precedes the data entry field on the official form. If an entry field contains multiple lines and shows the line references once on the left and right side of the form, use the same number of line references on the substitute form.

In addition, the reference code that is immediately before the data field must either be followed by a period or enclosed in parentheses. There must also be at least two blank spaces between the period or the right parenthesis and the first digit of the data field. (See *Section 6.1.4*.)

6.1.4
Decimal Points

A decimal point (a period) should be used for each money amount regardless of whether the amount is reported in dollars and cents or in whole dollars, or whether or not the vertical line that separates the dollars from the cents is present. The decimal points must be vertically aligned when possible.

Example.

5 State and local taxes

a State and local income taxes.....	5a.	000.00
-------------------------------------	-----	--------

b State and local real estate taxes.....	5b.	
--	-----	--

c State and local personal property taxes....	5c.	000.00
---	-----	--------

or

a State and local income taxes.....	(5a)	000.00
b State and local real estate taxes.....	(5b)	
c State and local personal property taxes....	(5c)	000.00

6.1.5 Multi-Page Forms

When submitting a multi-page form, send all its pages in the same package. If you will not be producing certain pages, note that in your cover letter.

Section 6.2 – Additional Instructions for All Forms

6.2.1 Use of Your Own Internal Control Numbers and Identifying Symbols

You may show the computer-prepared internal control numbers and identifying symbols on the substitute if using such numbers or symbols is acceptable to the taxpayer and the taxpayer's representative. Such information must not be printed in the top 0.5 inch clear area of any form or schedule requiring a signature. Except for the actual tax return form (Forms 1040, 1040-SR, 1120, 940, 941, etc.), you may print in the left vertical and bottom left margins. The bottom left margin you may use extends 3.5 inches from the left edge of the form. You may print internal control numbers in place of the removed IRS catalog number.

6.2.2 Required Software ID Number (Source Code) on Computer- Prepared Substitutes

In the February 2009 Government Accountability Office (GAO) report, "Many Taxpayers Rely on Tax Software and IRS Needs to Assess Associated Risks" (GAO-09-297), the GAO recommended that the IRS require a software identification number on all individual returns to specifically identify the software package used to prepare each tax return. The IRS already has this capability for all *e-filed* returns. In addition, many tax preparation software firms already print an IRS-issued 3-letter source code on paper returns that are generated by their individual tax software. This source code was assigned when the firms were seeking substitute forms approval under this current publication.

In order to follow this GAO recommendation, the IRS will require that all tax preparation software firms include the 3-letter source code on all paper tax returns created by their individual tax preparation software. The many firms that currently have and display their source code on paper returns generated from their software should continue to do so, and no change is necessary.

We have reviewed all software companies that passed Assurance Testing System (ATS) testing last filing season and have determined that some firms do not currently have a source code. To save you the burden of contacting us and for your convenience, we have assigned source codes to those firms.

You should program your source code to be placed in the bottom left-hand corner of page one of each paper form that will be generated by your individual tax return package. You do not need to apply for a new source code annually.

If you already use a 3-letter source code and we have issued you one in error, you are unsure if you were ever issued one, or you have other questions or concerns, you may contact Tax Forms and Publications Special Services Section at substituteforms@irs.gov.

The IRS requires tax preparation software firms that participate in the IRS Free File Program include the 3-letter FFF code on all paper Form 1040 returns created by their individual tax preparation software.

If you participate in the IRS Free File Program, you should program the 3-letter FFF code to be placed in the bottom left-hand corner of the first page of each paper Form 1040 that will be generated by your individual tax return package. The 3-letter FFF code and the 3-letter source code should be placed next to each other for consistency. If placing the 3-letter FFF code and the 3-letter source code next to each other is not possible, then above or below will be acceptable.

Example. The 3-letter FFF code and the 3-letter source code could be BCA-FFF or BCA FFF. A dash or a space is needed to separate the 3-letter FFF code and the 3-letter source code.

6.2.3 Descriptions for Captions, Lines, etc.

Descriptions for captions, lines, etc., appearing on the substitute forms may be limited to one print line by using abbreviations and contractions, and by omitting articles, prepositions, etc. However, sufficient keywords must be retained to permit ready identification of the caption, line, or item.

6.2.4 Determining Final Totals

Explanatory detail and/or intermediate calculations for determining final line totals may be included on the substitute. Preferably, such calculations should be submitted in the form of a supporting statement. If intermediate calculations are included on the substitute, the line on which they appear may not be numbered or lettered. Intermediate calculations may not be printed in the right column. This column is reserved only for official numbered and lettered lines that correspond to the ones on the official form. Generally, you may choose the format for intermediate calculations or subtotals on supporting statements to be submitted.

6.2.5 Instructional Text on the Official Form

Text on the official form, which is solely instructional (for example, “See instructions,” etc.), may generally be omitted from the substitute form.

6.2.6 Intermingling Is Prohibited

Showing more than one form or schedule on the same printout page is prohibited. Both sides of the paper may be used for multi-page forms, but it is unacceptable to intermingle forms.

For instance, Schedule E can be printed on both sides of the paper because the official form is multi-page, with page 2 continued on the back. However, do not print Schedule E on the front page and Schedule SE on the back page, or Schedule A on the front and Form 8615 on the back, etc. Both pages of a substitute form must match the official form. The back page may be left blank if the back page of the official form contains only the instructions.

6.2.7 Identifying Substitutes

Identify all computer-prepared substitutes clearly. Print the form designation 0.5 inch from the top margin and 1.5 inches from the left margin. Print the title centered on the first line of print. Print the tax year and, where applicable, the sequence number on the same line 0.5 inch to 1 inch from the right margin. Include the taxpayer’s name and SSN on all forms and attachments. Also, print the OMB number as reflected on the official form.

6.2.8 Negative Amounts

Negative (or loss) amount entries should be enclosed in brackets or parentheses or include a minus sign. This assists in accurate computation and input of form data. The IRS preprints parentheses in negative data fields on many official forms. These parentheses should be retained or inserted on printouts of affected substitute forms.

Part 7
Miscellaneous Forms and Programs

Section 7.1 – Specifications for Substitute Schedules K-1

7.1.1
Requirements for Schedules
K-1 That Accompany
Forms 1041, 1065, and
1120-S

Because of significant changes to improve processing, prior approval is now required for substitute Schedules K-1 that accompany Form 1041 (for estates and trusts), Form 1065 (for partnerships), or Form 1120-S (for S corporations). Substitute Schedules K-1 should be as close as possible to exact replicas of the official IRS schedules and follow the same process for submitting other substitute forms and schedules. Before releasing their substitute forms, software vendors are responsible for making any subsequent changes that have been made to the final official IRS forms after the draft forms have been posted.

Submit substitute Schedule K-1 forms, in PDF format, to scrips@irs.gov for scannability acceptance. Schedule K-1 forms that require testing do not need to be mailed to the Program. You must include information on the substitute that can be tested. This information should be dummy information. Use an “X” for alpha characters and “0” for numbers. The IRS will review and provide feedback of any changes needed so that your forms can be recognized correctly.

Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow at least 0.25 inch of white space around the 6-digit code.

- 661117 for Form 1041.
- 651123 for Form 1065.
- 671121 for Form 1120-S.

Schedules K-1 that accompany Forms 1041, 1065, or 1120-S must meet all specifications. The specifications include, but are not limited to, the following requirements.

- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words “* See attached statement for additional information.” must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.
- All Schedules K-1 that are filed with the IRS should be printed on commercial standard size (8.5” x 11”) paper (the international standard (A4) of 8.27” x 11.69” may be substituted).
- 10-point Helvetica Light Standard is preferred for all entries that are typed or made using a computer.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.
- Each recipient’s information must be on a separate sheet of paper. Therefore, you must separate all continuously printed substitutes, by recipient, before filing with the IRS.
- No carbon copies or pressure-sensitive copies will be accepted.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity (estate, trust, partnership, or S corporation) and the recipient (beneficiary, partner, or shareholder).

- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- The Schedule K-1 must contain all the line items as shown on the official form, except for the instructions, if any are printed on the back of the official Schedule K-1.
- The line items or boxes must be in the same order and arrangement as those on the official form.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, 50 1/2% should be 50.5%). Furnishing a total amount of each item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- State or local tax-related information may not be included on the Schedules K-1 filed with the IRS.
- The entity may have to pay a penalty if substitute Schedules K-1 are filed that do not conform to specifications.
- Additionally, the IRS may consider the Schedules K-1 that do not conform to specifications as not being able to be processed and may return Form 1041, 1065, or 1120-S to the filer to be filed correctly.

Schedules K-1 that are 2-D bar-coded will continue to require prior approval from the IRS. (See *Sections 7.1.3 through 7.1.5.*)

7.1.2 Special Requirements for Recipient Copies of Schedules K-1

Standardization for reporting information is required for recipient copies of substitute Schedules K-1 of Forms 1041, 1065, and 1120-S. Uniform visual standards are provided to increase compliance by allowing recipients and practitioners to more easily recognize a substitute Schedule K-1. The entity must furnish to each recipient a copy of Schedule K-1 that meets the following requirements.

- Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow white space around the 6-digit code.
 - 661117 for Form 1041.
 - 651123 for Form 1065.
 - 671121 for Form 1120-S.
- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words “* See attached statement for additional information.” must be preprinted in the lower right-hand side on Schedules K-1 of Forms 1041, 1065, and 1120-S.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity and recipient.
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, or 1120-S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.

- All applicable amounts and information required to be reported must be titled and numbered in the same manner as shown on the official IRS schedule. The line items or boxes must be in the same order and arrangement and must be numbered like those on the official IRS schedule.
- The Schedule K-1 must contain all items required for use by the recipient. The instructions for the schedule must identify the line or box number and code, if any, for each item as shown in the official IRS schedule.
- The amount of each recipient's share of each item must be shown. A partial percent should be reflected as a decimal (for example, 50 1/2% should be 50.5%). Furnishing a total amount of each line item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- Instructions to the recipient that are substantially similar to those on or accompanying the official IRS schedule must be provided to aid in the proper reporting of the items on the recipient's income tax return. Where items are not reported to a recipient because they do not apply, the related instructions may be omitted.
- The quality of the ink or other material used to generate recipients' schedules must produce clearly legible documents. In general, black chemical transfer inks are preferred.
- In order to assure uniformity of substitute Schedules K-1, the paper size should be standard commercial (8.5" x 11") (the international standard (A4) of 8.27" x 11.69" may be substituted).
- The paper weight, paper color, font type, font size, font color, and page layout must be such that the average recipient can easily decipher the information on each page. The preferred font is Helvetica and a minimum of 10-point font.
- State or local tax-related information may be included on recipient copies of substitute Schedules K-1. All non-tax-related information should be separated from the tax information on the substitute schedule to avoid confusion for the recipient.
- The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the outside of the envelope that contains the substitute recipient copy of Schedule K-1.
- The entity may have to pay a penalty if a substitute Schedule K-1 furnished to any recipient does not conform to the specifications of this revenue procedure and results in impeding processing.

7.1.3 Requirements for Schedules K-1 With Two- Dimensional (2- D) Bar Codes

Electronic filing is the preferred method of filing; however, 2-D bar code is the best alternative method for paper processing.

In an effort to improve efficiency and increase data accuracy, the IRS partnered with the tax software development community on a 2-D bar code project in 2003. Certain tax software packages have been modified to generate 2-D bar codes on Schedules K-1. As a result, when Schedules K-1 are printed using these programs, a bar code will print on the page.

Rather than manually transcribe information from the Schedule K-1, the IRS will scan the bar code and electronically upload the information from the Schedule K-1. This will result in more efficient operations within the IRS and fewer transcription errors for your clients.

Note. If software vendors do not want to produce bar-coded Schedules K-1, they may produce the official IRS Schedules K-1 but cannot use the expedited process for approving bar-coded Schedules K-1 and their parent returns as outlined in *Section 7.1.6*.

In addition to the requirements in *Sections 7.1.1* and *7.1.2*, the bar-coded Schedules K-1 must meet the following specifications.

- The bar code should print in the space labeled “For IRS Use Only” on each Schedule K-1. The entire bar code must print within the “For IRS Use Only” box surrounded by a white space of at least 0.25 inch.
- Bar codes must print in PDF417 format.
- The bar codes must always be in the specified format with every field represented by at least a field delimiter (carriage return). Leaving out a field in a bar code will cause every subsequent field to be misread.
- Be sure to include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120-S. Allow white space around the 6-digit code.
 - 661117 for Form 1041.
 - 651123 for Form 1065.
 - 671121 for Form 1120-S.

7.1.4 2-D Bar Code Specifications for Schedules K-1

Follow these general specifications for preparing all 2-D bar-coded Schedules K-1.

- Numeric fields.
 - Do not include leading zeros (except TINs, ZIP codes, and percentages).
 - If negative value, the minus sign “-” must be present immediately to the left of the number and part of the 12-position field.
 - Do not use non-numeric characters except that the literal “STMT” can be put in money fields.
 - All money fields should be rounded to the nearest whole dollar amount—if a money amount ends in 00 to 49 cents, drop the cents; if it ends in 50 to 99 cents, truncate the cents and increment the dollar amount by one. Use the same rounding technique for the bar-coded and the printed Schedules K-1.
 - All numeric-only fields are right justified (except TINs and ZIP codes).
- All field lengths are expressed as maximum lengths. If the value in the field has fewer positions or the software program does not support that many positions, put in the bar code only those positions actually used.
- Alpha fields.
 - Do not include leading blanks (left justified).
 - Do not include trailing blanks.
 - Use uppercase alpha characters only.

- Variable fields.
 - Do not include leading blanks (left justified).
 - Do not include trailing blanks.
 - Use uppercase alpha characters, numerics, and special characters as defined in each field.
- Delimit each field with a carriage return.
- Express percentages as 6-digit numbers without the percent sign. Left justify with a leading zero(s) (for percentages less than 100%) and no decimal point (decimal point is assumed between 3rd and 4th positions). Examples: 25.32% expressed as “025320”; 105% expressed as “105000”; 8.275% expressed as “008275”; 10.24674% expressed as “010247.”
- It is vital that the print routine reinitialize the bar code prior to printing each succeeding Schedule K-1. Failure to do this will result in each Schedule K-1 for a parent return having the same bar code as the document before it.

7.1.5 Approval Process for Bar-Coded Schedules K-1

Prior to releasing commercially available tax software that creates bar-coded Schedules K-1, the printed schedule and the bar code must both be tested. If your company is creating bar-coded Schedules K-1, you must receive certification for both the printed Schedule K-1, as well as the bar code, before offering your product for sale. Bar-code testing must be done using the final official IRS Schedule K-1. Bar-code approval requests must be resubmitted for any subsequent changes to the official IRS form that would affect the bar code. Below are instructions and a sequence of events that will comprise the testing process.

- The IRS has released the final Schedule K-1 bar-code specifications by publishing them on the IRS.gov website (see [IRS.gov/E-file-Providers/K-1-Bar-Code-Certification-Process](https://www.irs.gov/efile-providers/k-1-bar-code-certification-process)).
- The IRS will publish a set of test documents that will be used to test the ability of tax preparation software to create bar codes in the correct format.
- Software developers will submit two identical copies of the test documents—one to the IRS and one to a contracted testing vendor.
- The IRS will use one set to ensure the printed schedules comply with standard substitute forms specifications.
- If the printed forms fail to meet the substitute forms criteria, the IRS will inform the software developer of the reason for noncompliance.
- The software developer must resubmit the Schedule(s) K-1 until it passes the substitute forms criteria.
- The testing vendor will review the bar codes to ensure they meet the published bar-code specifications.
- If the bar code(s) does not meet published specifications, the testing vendor will contact the software developer directly, informing them of the reason for noncompliance.
- Software developers must submit new bar-coded schedules until they pass the bar-code test.
- When the bar code passes, the testing vendor will inform the IRS that the developer has passed the bar-code test and the IRS will issue an overall approval for both the substitute form and the bar code.

- After receiving this consolidated response, the software vendor is free to release software for tax preparation as long as any subsequent revisions to the schedules do not change the fields.
- Find the mailing address for the testing vendor below. Separate and simultaneous mailings to the IRS and the vendor will reduce testing time.

7.1.6 Procedures for Reducing Testing Time

In order to help provide incentives to the software development community to participate in the Schedule K-1 2-D project, the IRS has committed to expediting the testing of bar-coded Schedules K-1 and their associated parent returns. To receive this expedited service, follow the instructions below.

- Mail the parent returns (Forms 1041, 1065, 1120-S) and associated bar-coded Schedule(s) K-1 to the appropriate address below in a separate package from all other approval requests.

Internal Revenue Service
Attn: K-1 Substitute Forms Analyst
SE:W:CAR:MP:T:T:SP
Room 6411
1111 Constitution Ave. NW
Washington, DC 20224

- Mail one copy of the parent form(s) and Schedule(s) K-1 to the IRS and another copy to the testing vendor at the address below.

Leidos-IRS Paper and Remittance
Processing Support (PRPS II)
Attn: Dane Hawkins
9737 Washingtonian Blvd.
Gaithersburg, MD 20878

- Include multiple email and phone contact points in the packages.
- While the IRS can expedite bar-coded Schedules K-1 and their associated parent returns, it cannot expedite the approval of nonassociated tax returns.
- Vendors are encouraged to go to NACTP.org for compliance guidelines in regards to file size and error-correction level.
- Submissions should include the IRS source code or NACTP vendor ID code printed on the lower left corner of the form or in place of the IRS catalog number.
- If a change is made to the bar code after approval, be sure to increment the version number.

Section 7.2 – Guidelines for Substitute Forms 8655

7.2.1 Increased Standardization for Forms 8655

Increased standardization for reporting information on substitute Forms 8655 is now required to aid in processing and for compliance purposes. Follow the guidelines in *Section 7.2.2*.

7.2.2
Requirements for
Substitute Forms 8655

Follow these specific requirements when producing substitute Forms 8655.

- The first line of the title must be “Reporting Agent Authorization.”
- If you want to include a reference to “State Limited Power of Attorney,” it can be in parentheses under the title. “State” must be the first word within the parentheses.
- You must include “Form 8655” on the form.
- While the line numbers do not have to match the official form, the sequence of the information must be in the same order.
- The size of any variable data must be printed in a font no smaller than 10 points.
- For adequate disclosure checks, the following must be included for each taxpayer.
 - Name.
 - EIN.
 - Address.
- At this time, Form 944 will not be required if Form 941 is checked. Only those forms that the reporting agent company supports need to be listed.
- The jurat (perjury statement) must be identical with the exception of references to line numbers.
- A contact name and number for the reporting agent is not required.
- Any state information included should be contained in a separate section of the substitute form. Preferably, this information will be in the same area as line 19 of the official form.
- All substitute Forms 8655 must be approved by the Program as outlined in the Form 8655 specifications in this current publication.
- If you have not already been assigned a 3-letter source code, you will be given one when your substitute form is submitted for approval. This source code should be included in the lower left corner of the form.
- The 20-business-day assumed approval policy does not apply to Form 8655 approvals.

7.2.3
Exception for Form 8655

Because of how Form 8655 is processed and distributed to recipients, vendors are allowed to affix their logo onto the substitute version of the form. **This exception is for Form 8655 only.**

Section 7.3 – Guidelines for Substitute Image Character Recognition (ICR) Forms

7.3.1
Overview

The following suggestions may be used as a guideline for creating easily scanned substitute tax forms. If you choose to participate, please use the Form 1040 format provided in *Exhibit C* and *Exhibit D*. The grid view is for user ease of understanding only and should be removed before printing forms for submission.

Note. The exhibits are to show formatting only, and are not a current copy of the form. Please use the most current version of any form to create the substitute tax form.

7.3.2 Automated Processing of Certain Forms

Certain forms have been redesigned for automated processing via ICR technology. As a result, these forms have different requirements for reproduction. These specific requirements apply to both the form image as well as the format of the variable data.

7.3.3 Form Design Requirements

- Forms should have a 0.5-inch margin on all sides.
 - Nothing should be printed within the 0.5-inch margins.
 - Vertical and horizontal lines should be replicated as they are on the IRS form.
 - Printing should be in black ink on white paper. No color or shading should be used.
 - Reproduce the exact text on each line as it appears on the IRS form. Do not abbreviate or leave out text.
-

7.3.4 Data Format Requirements

- See *Section 3.3*.
 - Rows 1–3 and 64–66, and columns 1–5 and 81–85 should be left blank.
 - SSN and EIN fields should have dashes (for example, 999-99-9999 or 99-99999999).
 - Do not use real data unless specifically directed (for example, printing 12345678912 vs. XXXXXXXXXXXX for bank routing number as required by Pub. 1345).
 - Dollar value fields should be printed with commas and no decimals (for example, 999,999,999).
 - Data placement should match defined areas on form. Variable data should not be printed outside defined areas (for example, first, middle, last, and suffix fields should be printed where they appear on the IRS form, not combined).
 - Do not populate blank value fields with a zero. If there is no value for a field, leave it blank. Exceptions include calculated fields with valid inputs that result in a value of zero.
 - Vendor codes and company-specific printing information should only appear in the spaces designated on the form.
-

Part 8 Additional Information

Section 8.1 – Forms for Electronically Filed Returns

8.1.1 Electronic Filing Program

Electronic filing is a method by which authorized providers transmit tax return information to an IRS Service Center in the format of the official IRS forms. The IRS accepts both refund and balance due forms that are filed electronically.

8.1.2 Applying To Participate in IRS e-file

Anyone wishing to participate in IRS *e-file* of tax returns must submit an *e-file* application. The application can be completed and submitted electronically on the IRS website at IRS.gov after first registering for e-services on the website.

8.1.3 Obtaining the Taxpayer Signature/ Submission of Required Paper Documents

Taxpayers choosing to electronically prepare and file their returns will be required to use the Self-Select PIN method as their signatures.

Electronic return originators (EROs) can *e-file* individual income tax returns only if the returns are signed electronically using either the Self-Select or Practitioner PIN method.

Taxpayers must use Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return, to send supporting documents that are required to be submitted to the IRS.

For specific information about electronic filing, refer to Pub. 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns.

8.1.4 Guidelines for Preparing Substitute Forms in the Electronic Filing Program

A participant in the electronic filing program who wants to develop a substitute form should follow the guidelines throughout this publication and send a sample form for approval to the Program at substituteforms@irs.gov. If you do not prepare substitute Form 8453 using a font in which all IRS wording fits on a single page, the form will not be accepted.

Note. Use of unapproved forms could result in suspension of the participant from the electronic filing program.

Section 8.2 – Effect on Other Documents

8.2.1 Effect on Other Documents

This revenue procedure supersedes Revenue Procedure 2022-31, 2022-43 I.R.B. 339.

Section 8.3 – Exhibits

Exhibit A — Form 1040-ES Voucher 20XX

Exhibit B — Substitute Form Checksheet

Exhibit C — Form 1040 With Grid

Exhibit D — Form 1040 Without Grid

Exhibit A

Form 1040-ES Voucher

Form 1040-ES (OCR) Department of the Treasury Internal Revenue Service		20XX OMB No. 1545-0074	Estimated Tax	Payment Voucher 1	Calendar year— Due April XX, 20XX
Make your check or money order payable to "United States Treasury." Enter your SSN and "20XX Form 1040-ES" on your payment. If your name, address, or SSN is incorrect, see instructions.			Amount of estimated tax you are paying by check or money order.	Dollars 0,000	Cents
For Privacy Act and Paperwork Reduction Act Notice, see instructions. Pay online at IRS.gov/epay. Simple. Fast. Secure.					
John Q. Doe 000 Someplace Somewhere Blvd. City, St 00000			PO Box 00000 City, St 00000 - 0000		
0000000000 XX DOE 00 0 20XX12 000					

Exhibit B

Substitute Forms Checksheet

Checksheet of IRS Substitute Forms

Submitted on:

Enter the following information:

Company:

Contact:

Phone:

Fax

Source Code:

[illegible]

Authorized Name: _____

Title: _____

Reviewer's Name: _____

Telephone: _____

Date: _____

Form 1040 (20XX)		Page 2	
Name XXX		SSN 999999999	
Tax and Credits	16 Tax (see instructions). Check if any from Form(s): 1 X 8814 2 X 4972		
	3 X XXXXXXXXXX 999,999,999	16	999,999,999
	17 Amount from Schedule 2, line 3	17	999,999,999
	18 Add lines 16 and 17	18	999,999,999
	19 Child tax credit or credit for other dependents from Schedule 8812	19	999,999,999
	20 Amount from Schedule 3, line 8	20	999,999,999
	21 Add lines 19 and 20	21	999,999,999
	22 Subtract line 21 from line 18. If zero or less, enter -0-	22	999,999,999
	23 Other taxes, including self-employment tax, from Schedule 2, line 21	23	999,999,999
	24 Add lines 22 and 23. This is your total tax	24	999,999,999
Payments	25 Federal income tax withheld from:		
	a Form(s) W-2 25a 999,999,999		
	b Form(s) 1099 25b 999,999,999		
	c Other forms (see instructions) 25c 999,999,999		
	d Add lines 25a through 25c 25d 999,999,999		
If you have a qualifying child, attach Sch. EIC.	26 20XX estimated tax payments and amount applied from 20XX return	26	999,999,999
	27 Earned income credit (EIC) 27 999,999,999		
	28 Additional child tax credit from Schedule 8812 28 999,999,999		
	29 American opportunity credit from Form 8863, line 8 29 999,999,999		
	30 Reserved for future use 30		
	31 Amount from Schedule 3, line 15 31 999,999,999		
	32 Add lines 27, 28, 29, and 31. These are your total other payments and refundable credits 32 999,999,999		
	33 Add lines 25d, 26, and 32. These are your total payments 33 999,999,999		
Refund	34 If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you overpaid 34 999,999,999		
	35a Amount of line 34 you want refunded to you. If Form 8888 is attached, check here X 35a 999,999,999		
Direct deposit?	b Routing number 999999999 c Type: X Checking X Savings		
See instructions.	d Account number 9999999999999999		
	36 Amount of line 34 you want applied to your 20XX estimated tax 36 999,999,999		
Amount You Owe	37 Subtract line 33 from line 24. This is the amount you owe. For details on how to pay, go to www.irs.gov/Payments or see instructions 37 999,999,999		
	38 Estimated tax penalty (see instructions) 38 999,999,999		
Third Party	Do you want to allow another person to discuss this return with the IRS? See		
Designee	Instructions X Yes. Complete below. X No		
	Designee's name Phone no. Personal identification number (PIN) 999-999-9999 99999		
Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
Joint return? See instructions. Keep a copy for your records.	Your signature Date If the IRS sent you an Identity Protection PIN, enter it here (see Instr.) 999999		
	Spouse's signature Date If the IRS sent your spouse an Identity Protection PIN, enter it here (see Instr.) 999999		
	Your occupation XXX Spouse's occupation XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		
	Phone no. 999-999-9999 Email address XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		
Paid	Preparer's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		
Preparer	Preparer's signature Date PTIN Check if: Self-employed		
Use Only	Firm's name XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Phone no. 999-999-9999		
	Firm's address XXXXXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXXXXXXX		
	Firm's EIN 9999999999		
Go to www.irs.gov/Form1040 for instructions and the latest information. Form 1040 (20XX)			
DAA			

Exhibit D

Form 1040 Without Grid

Form 1040 Department of the Treasury—Internal Revenue Service U.S. Individual Income Tax Return	20XX OMB No. 1545-0074	(RFS Use Only—Do not write or staple in this space.)																														
Your first name and middle initial: XXXXXXXXXXXX X Last name: XXXXXXXXXXXXXXXXXXXXXXXX If joint return, spouse's first name and middle initial: XXXXXXXXXXXX X Last name: XXXXXXXXXXXXXXXXXXXXXXXX Home address (number and street). If you have a P.O. box, see instructions.																																
City, town or post office. If you have a foreign address, also complete spaces below. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX Foreign country name: XXXXXXXXXXXXXXXXXXXXXXXX Foreign province/state/county: XXXXXXXXXXXXXXXXXXXXXXXX		Apt. no.: XXXXX State: XX ZIP code: 9999999999 Foreign postal code: 9999999999999999																														
Your social security number: 999999999 Spouse's social security number: 999999999 Taxpayer Date of Death: 01/01/01 Spouse's Date of Death: 01/01/01																																
Filing Status Check only one box: <input checked="" type="checkbox"/> Single <input checked="" type="checkbox"/> Married filing jointly <input checked="" type="checkbox"/> Married filing separately (MFS) <input checked="" type="checkbox"/> Head of household (HOH) <input checked="" type="checkbox"/> Qualifying surviving spouse (QSS)																																
Standard Deduction - Someone can claim: <input checked="" type="checkbox"/> You as a dependent <input checked="" type="checkbox"/> Your spouse as a dependent <input checked="" type="checkbox"/> Spouse itemizes on a separate return or you were a dual-status alien																																
Age/Blindness Born before 1/2/1958: You <input checked="" type="checkbox"/> Spouse <input checked="" type="checkbox"/> Blind: You <input checked="" type="checkbox"/> Spouse <input checked="" type="checkbox"/>																																
Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input checked="" type="checkbox"/> You <input checked="" type="checkbox"/> Spouse																																
If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX																																
Digital Assets At any time during 20XX, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																
Dependents (see instructions): <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>(1) First name</th> <th>Last name</th> <th>(2) Social security number</th> <th>(3) Relationship to you</th> <th>(4) Check the box if qualifies for (see instructions): Child tax credit</th> <th>Credit for other dependents</th> </tr> </thead> <tbody> <tr> <td>XXXXXXXXXXXX</td> <td>XXXXXXXXXXXX</td> <td>999999999</td> <td>XXXXXXXXXXXX</td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>XXXXXXXXXXXX</td> <td>XXXXXXXXXXXX</td> <td>999999999</td> <td>XXXXXXXXXXXX</td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>XXXXXXXXXXXX</td> <td>XXXXXXXXXXXX</td> <td>999999999</td> <td>XXXXXXXXXXXX</td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>XXXXXXXXXXXX</td> <td>XXXXXXXXXXXX</td> <td>999999999</td> <td>XXXXXXXXXXXX</td> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> </tbody> </table>			(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents	XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents																											
XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>																											
XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>																											
XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>																											
XXXXXXXXXXXX	XXXXXXXXXXXX	999999999	XXXXXXXXXXXX	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>																											
Income 1a Total amount from Form(s) W-2, box 1 (see instructions) 999,999,999 b Household employee wages not reported on Form(s) W-2 999,999,999 c Tip income not reported on line 1a (see instructions) 999,999,999 d Medicaid waiver payments not reported on Form(s) W-2 (see instructions) 999,999,999 e Taxable dependent care benefits from Form 2441, line 26 999,999,999 f Employer-provided adoption benefits from Form 8839, line 29 999,999,999 g Wages from Form 8919, line 6 999,999,999 h Other earned income (see instructions) 999,999,999 i Nontaxable combat pay election (see instructions) 11 999,999,999 z Add lines 1a through 1h 999,999,999																																
Attach Sch. B if required: 2a Tax-exempt interest 2a 999,999,999 b Taxable interest 2b 999,999,999 3a Qualified dividends 3a 999,999,999 b Ordinary dividends 3b 999,999,999 4a IRA distributions 4a 999,999,999 b Taxable amount 4b 999,999,999 5a Pensions and annuities 5a 999,999,999 b Taxable amount 5b 999,999,999 6a Social sec. ben. 6a 999,999,999 b Taxable amount 6b 999,999,999																																
Standard Deduction for - • Single or married filing separately, \$12,950 • Married filing jointly or qualifying surviving spouse, \$25,900 • Head of household, \$19,400 • If you checked any box under Standard Deduction, see instructions.																																
c If you elect to use the lump-sum election method, check here (see instructions) <input checked="" type="checkbox"/> 7 Capital gain or (loss). Attach Schedule D if required. If not required, check here <input checked="" type="checkbox"/> 7 999,999,999 8 Other income from Schedule 1, line 10 8 999,999,999 9 Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income 9 999,999,999 10 Adjustments to income from Schedule 1, line 26 10 999,999,999 11 Subtract line 10 from line 9. This is your adjusted gross income 11 999,999,999 12 Standard deduction or itemized deductions (from Schedule A) 12 999,999,999 13 Qualified business income deduction from Form 8995 or Form 8995-A 13 999,999,999 14 Add lines 12 and 13 14 999,999,999 15 Subtract line 14 from line 11. If zero or less, enter -0-. This is your taxable income 15 999,999,999																																
For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form 1040 (20XX)																																

Exhibit D (continued)

Form 1040 Without Grid

Form 1040 (20X0)		Page 2	
Name XX		SSN 999999999	
Tax and Credits	16 Tax (see instructions). Check if any from Form(s): 1 <input checked="" type="checkbox"/> 8814 2 <input checked="" type="checkbox"/> 4372 3 <input checked="" type="checkbox"/> XXXXXXXXXX 999,999,999	16 999,999,999	
	17 Amount from Schedule 2, line 3	17 999,999,999	
	18 Add lines 16 and 17	18 999,999,999	
	19 Child tax credit or credit for other dependents from Schedule 8812	19 999,999,999	
	20 Amount from Schedule 3, line 8	20 999,999,999	
	21 Add lines 19 and 20	21 999,999,999	
	22 Subtract line 21 from line 18. If zero or less, enter -0-	22 999,999,999	
	23 Other taxes, including self-employment tax, from Schedule 2, line 21	23 999,999,999	
	24 Add lines 22 and 23. This is your total tax	24 999,999,999	
Payments	25 Federal income tax withheld from: a Form(s) W-2 25a 999,999,999 b Form(s) 1099 25b 999,999,999 c Other forms (see instructions) 25c 999,999,999 d Add lines 25a through 25c 25d 999,999,999		
If you have a qualifying child, attach Sch. EIC.	26 20X0 estimated tax payments and amount applied from 20X0 return	26 999,999,999	
	27 Earned income credit (EIC)	27 999,999,999	
	28 Additional child tax credit from Schedule 8812	28 999,999,999	
	29 American opportunity credit from Form 8863, line 8	29 999,999,999	
	30 Reserved for future use	30	
	31 Amount from Schedule 3, line 15	31 999,999,999	
	32 Add lines 27, 28, 29, and 31. These are your total other payments and refundable credits	32 999,999,999	
	33 Add lines 25d, 26, and 32. These are your total payments	33 999,999,999	
Refund	34 If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you overpaid	34 999,999,999	
	35a Amount of line 34 you want refunded to you. If Form 8888 is attached, check here <input checked="" type="checkbox"/> 35a 999,999,999		
Direct deposit? See instructions.	b Routing number 999999999 c Type: <input checked="" type="checkbox"/> Checking <input checked="" type="checkbox"/> Savings d Account number 9999999999999999		
	36 Amount of line 34 you want applied to your 20X0 estimated tax	36 999,999,999	
Amount You Owe	37 Subtract line 33 from line 24. This is the amount you owe. For details on how to pay, go to www.irs.gov/Payments or see instructions	37 999,999,999	
	38 Estimated tax penalty (see instructions)	38 999,999,999	
Third Party Designee	Do you want to allow another person to discuss this return with the IRS? See instructions <input checked="" type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No Designee's name XX Phone no. 999-999-9999 Personal identification number (PIN) 99999		
Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
Joint return? See instructions. Keep a copy for your records.	Your signature XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		Date _____ If the IRS sent you an identity Protection PIN, enter it here (see instr.) 999999
	Spouse's signature. If a joint return, both must sign. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		Date _____ If the IRS sent your spouse an identity Protection PIN, enter it here (see instr.) 999999
	Your occupation XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Spouse's occupation XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX		
	Phone no. 999-999-9999 Email address XX		
Paid	Preparer's name XX		
Preparer	Preparer's signature XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	Date 01/01/10	PTIN 999999999999
Use Only	Firm's name XX	Phone no. 999-999-9999	Check if: <input checked="" type="checkbox"/> Self-employed
	Firm's address XXXXXXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXXXXXXXX	Firm's EIN 9999999999	

Go to www.irs.gov/Form1040 for instructions and the latest information.

Form 1040 (20X0)

DAA

Rev. Proc. 2023-33

SECTION 1. PURPOSE

This revenue procedure sets forth the procedures under §§ 30D(g) and 25E(f) of the Internal Revenue Code (Code)¹ for the transfer of the clean vehicle credit or previously-owned clean vehicle credit from the taxpayer who elects to transfer such credit to an eligible entity. These procedures will apply to transfers of credits after December 31, 2023. These procedures include registration procedures with the Internal Revenue Service (IRS) for qualified manufacturers and sellers, as well as procedures for dealer registration and the suspension and revocation of that registration. This revenue procedure also establishes a program to make advance payments of credit amounts to registered dealers. In addition, this revenue procedure supersedes sections 5.01 and 6.03 of Rev. Proc. 2022-42, 2022-52 I.R.B. 565, providing new information for the timing and manner of submission of seller reports, respectively. Finally, this revenue procedure supersedes sections 6.01 and 6.02 of Rev. Proc. 2022-42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

SECTION 2. BACKGROUND

.01 Section 30D, Clean Vehicle Credit

(1) Section 30D was enacted by § 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by § 13401 of Public

Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). In general, the amendments made by § 13401 of the IRA to § 30D apply to vehicles placed in service after December 31, 2022, except as provided in § 13401(k)(2) through (5) of the IRA.

(2) Section 30D(a) allows a credit for the taxable year with respect to each new clean vehicle placed in service by a taxpayer during the taxable year (§ 30D credit). Section 30D(b) provides a maximum credit of \$7,500 per vehicle, consisting of \$3,750 if certain critical minerals requirements are met and \$3,750 if certain battery components requirements are met. These requirements are described in § 30D(e)(1) and (2), respectively.

(3) Section 30D(g) allows the taxpayer to elect to transfer the § 30D credit in certain situations. Specifically, § 30D(g)(1) provides that, subject to such regulations or other guidance as the Secretary of the Treasury or her delegate (Secretary) determines necessary, a taxpayer may elect to transfer a § 30D credit with respect to a new clean vehicle to an eligible entity (transfer election). If the taxpayer who acquires a new clean vehicle makes a transfer election with respect to such vehicle, the § 30D(a) credit that would otherwise be allowed to such taxpayer with respect to such vehicle is allowed to the eligible entity specified in such election (and not the taxpayer). Section 30D(g)(2) defines an “eligible entity” with respect to the vehicle for which the § 30D credit is allowed as the dealer that sold such vehicle to the taxpayer and that satisfies the following four requirements of § 30D(g)(2)(A) through (D) set forth in section 2.01(3)(a) through (d) of this revenue procedure:

(a) The dealer, subject to § 30D(g)(4), must be registered with the IRS for purposes of § 30D(g)(2), at such time, and in such form and manner, as the Secretary prescribes.

(b) The dealer, prior to the transfer election and not later than at the time of sale, must have disclosed to the taxpayer purchasing such vehicle:

(i) The manufacturer’s suggested retail price,

(ii) The value of the § 30D credit allowed and any other incentive available for the purchase of such vehicle, and

(iii) The amount provided by the dealer to such taxpayer as a condition of the transfer election.

(c) The dealer, not later than at the time of sale, must have paid the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) an amount equal to the § 30D credit otherwise allowable to such taxpayer.

(d) The dealer, with respect to any incentive otherwise available for the purchase of a vehicle for which a § 30D credit is allowed under § 30D(a), including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, must have ensured that:

(i) The availability or use of such incentive does not limit the ability of a taxpayer to make a transfer election, and

(ii) Such election does not limit the value or use of such incentive.

(4) Section 30D(g)(3) addresses the timing of the election and provides that any transfer election cannot be made by the taxpayer any later than the date on which the vehicle for which the § 30D credit is allowed is purchased.

(5) Section 30D(g)(4) provides that, upon determination that a dealer has failed to comply with the requirements described in § 30D(g)(2), the dealer’s registration may be revoked.

(6) Section 30D(g)(5) provides that, with respect to any payment described in § 30D(g)(2)(C), such payment is not includible in the gross income of the taxpayer and is not deductible with respect to the dealer.

(7) Section 30D(g)(6) addresses the application of certain other requirements to the transfer election and provides that in the case of any transfer election with respect to any vehicle: (A) the basis reduction and no double benefit requirements of § 30D(f)(1) and (2) apply to the taxpayer who acquired the vehicle in the same manner as if the § 30D credit determined with respect to such vehicle were allowed to such taxpayer; (B) the election in § 30D(f)(6) to not take the § 30D credit does not apply; and (C) the vehicle identification

¹ Unless otherwise specified, all “Section” or “§” references are to sections of the Code.

number (VIN) requirement of § 30D(f)(9) is treated as satisfied if the eligible entity provides the VIN of such vehicle to the IRS in such manner as the Secretary may provide.

(8) Section 30D(g)(7)(A) authorizes the Secretary to establish a program to make advance payments to registered dealers in an amount equal to the cumulative amount of the § 30D credits allowed under § 30D(a) with respect to any vehicles sold by such entity for which a transfer election has been made. Section 30D(g)(7)(B) details that rules similar to the rules of § 6417(d)(6) apply for purposes of any excessive payments, and § 30D(g)(7)(C) provides that, for purposes of 31 U.S.C. 1324, the payments under § 30D(g)(7)(A) are treated in the same manner as a refund due from a credit provision referred to in 31 U.S.C. 1324(b)(2).

(9) Section 30D(g)(8) defines the term “dealer” as a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in § 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles. Section 30D(g)(9) defines the term “Indian tribal government” as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of § 30D(g) (that is, August 16, 2022) pursuant to § 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

(10) Section 30D(g)(10) provides that, in the case of any taxpayer who has made a transfer election with respect to a new clean vehicle and received a payment from an eligible entity, if the § 30D credit would otherwise (but for § 30D(g)) not be allowable to such taxpayer pursuant to the application of the limitation based on modified adjusted gross income in § 30D(f)(10), the income tax imposed on such taxpayer under chapter 1 of the Code for the taxable year in which such vehicle was placed in service must be increased by the amount of the payment received by such taxpayer.

(11) Section 13401(k)(4) of the IRA provides that the ability for a taxpayer to elect to transfer a § 30D credit under § 30D(g) applies to vehicles placed in service after December 31, 2023.

.02 Section 25E, Previously-Owned Clean Vehicles Credit

(1) Section 13402 of the IRA added § 25E to the Code. Section 25E(a) provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle (§ 25E credit).

(2) Section 25E(c)(1) defines “previously-owned clean vehicle”, with respect to a taxpayer, as a motor vehicle that satisfies the following requirements:

(a) The model year of the motor vehicle is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle.

(b) The original use of the motor vehicle commences with a person other than the taxpayer.

(c) The motor vehicle is acquired by the taxpayer in a qualified sale.

(d) The motor vehicle:

(i) Meets the requirements of § 30D(d)(1)(C), (D), (E), (F), and (H) (except for § 30D(d)(1)(H)(iv)), or

(ii) Is a motor vehicle that (I) satisfies the requirements under § 30B(b)(3)(A) and (B), and (II) has a gross vehicle weight rating of less than 14,000 pounds.

(3) Section 25E(c)(2) defines a “qualified sale” as a sale of a motor vehicle:

(i) By a dealer (as defined in § 30D(g)(8)),

(ii) For a sale price that does not exceed \$25,000, and

(iii) That is the first transfer since the date of enactment to a qualified buyer other than the person with whom the original use of such vehicle commenced.

(4) Section 25E(c)(3) defines the term “qualified buyer” for purposes of § 25E as a taxpayer:

(a) Who is an individual,

(b) Who purchases such vehicle for use and not for resale,

(c) With respect to whom no deduction is allowable with respect to another taxpayer under § 151, and

(d) Who has not been allowed a § 25E credit for any sale of a motor vehicle during the 3-year period ending on the date of the sale of the previously-owned clean vehicle.

(5) Section 25E(c)(4) defines “motor vehicle” and “capacity” to have the meaning given such terms in § 30D(d)(2) and (4), respectively.

(6) Section 25E(d) provides that no credit is allowed under § 25(a) with respect to any vehicle unless the taxpayer includes the vehicle identification number of such vehicle on the return of tax for the taxable year.

(7) Section 25E(f) provides that rules similar to § 30D(g) apply to the transfer of a § 25E credit for previously-owned vehicles (thus, a taxpayer also may elect to transfer a § 25E credit). For purposes of this revenue procedure, the program established under §§ 30D(g)(7)(A) and 25E(f) to make advance payments of amounts of § 30D credits and § 25E credits to registered dealers with respect to eligible clean vehicles sold by such dealers for which a taxpayer makes a transfer election is referred to as the “advance payment program.”

(8) Section 13402(e)(2) of the IRA provides that the ability of a taxpayer to elect to transfer a § 25E credit under § 25E(f) applies to vehicles acquired after December 31, 2023.

.03 Revenue Procedure 2022-42.

(1) Revenue Procedure 2022-42, in relevant part, established procedures for qualified manufacturers to enter into written agreements with the IRS in accordance with §§ 30D(d)(1)(C) and 30D(d)(3), and procedures for persons selling vehicles to submit seller reports to the IRS.

(2) Sections 4.01 and 4.03 of Rev. Proc. 2022-42 provide, respectively, that a manufacturer must enter into a written agreement with the IRS to become a qualified manufacturer and must submit written reports to the IRS containing required information.

(3) Section 5.01 of Rev. Proc. 2022-42 provides, in relevant part, that the seller of a clean vehicle must submit to the Secretary a seller report containing certain information within fifteen (15) days of the end of the calendar year in which the sale occurs. Section 6.03 of Rev. Proc. 2022-42 provides that, beginning January

15, 2024, seller reports must be filed with the IRS within fifteen days after the end of the calendar year in which the sale occurs in a format and method that the Secretary provides.

(4) Section 6.01 of Rev. Proc. 2022-42 provides that manufacturers must send their signed written agreements pursuant to section 4.01 of Rev. Proc. 2022-42 to *IRS.Clean.Vehicle.Manufacturers@irs.gov*. Section 6.02 of Rev. Proc. 2022-42 provides, in relevant part, that qualified manufacturers must file written monthly reports with the IRS by the fifteenth of the month. Qualified manufacturers must send an email to *IRS.Clean.Vehicles.QM.Reporting@irs.gov* indicating their intent to submit monthly reports and the IRS will respond with instructions on how to submit their reporting information.

.04 Transfer Election and Advance Payment Program Procedural Requirements. The procedural rules described in this Revenue Procedure are designed in part to ensure program integrity. In particular, advance payment of the § 30D and § 25E credits poses unique compliance challenges, since such advance payments are not subject to the same tax administration procedures that apply to claiming a credit via return filing. Furthermore, participation in the credit transfer and advance payment program is optional. The transfer of § 30D and § 25E credits is elective on the part of the taxpayer, and the eligible entity can decide whether to offer to the taxpayer the ability to transfer the § 30D and § 25E credits (thereby participating in the advance payment program). Taxpayers instead may choose to wait and claim a § 30D or § 25E credit on the taxpayer's return. Section 30D(g)(1) provides that a taxpayer election to transfer the § 30D credit is subject to the regulations or other guidance that the Secretary determines necessary. Section 30D(g)(7) instructs the Secretary to establish a program for making advance payments to eligible entities – that is, a program to make payments to the eligible entity before the eligible entity files its Federal income tax return for the relevant taxable year. Section 25E(f) provides that, for purposes of § 25E, rules similar to the rules of § 30D(g) apply. Taken together, these provisions provide authority for the Secretary to establish the parameters and

conditions of the transfer election and the accompanying advance payment program for those taxpayers and eligible entities that choose to participate, in furtherance of sound tax administration.

SECTION 3. DEFINITIONS

.01 In General. Terms used in this revenue procedure and not defined in section 3 of this revenue procedure have the same meaning as provided in §§ 30D and 25E, the proposed regulations thereunder, and the final regulations thereunder (once issued).

.02 IRS Energy Credits Online Portal. For purposes of this revenue procedure, the “IRS Energy Credits Online Portal” refers to the registration portal that manufacturers and sellers must use to register as a qualified manufacturer, seller, or registered dealer. A link to the site will be made available on the IRS website. Any successor portal or successor site address will be announced and made available on the IRS website.

.03 Seller. For purposes of this revenue procedure, “seller” means, for purposes of § 30D, the person who sells any new clean vehicle to the taxpayer, or, for purposes of § 25E, the dealer (as defined in § 30D(g)(8)) who sells any previously-owned clean vehicle to the taxpayer.

SECTION 4. REGISTRATION THROUGH THE ENERGY CREDITS ONLINE PORTAL

.01 Overview of Registration Requirements. This section 4 sets out the registration requirements “IRS Energy Credit Portal” with the IRS for various aspects of the Energy Credits Online Portal for manufacturers, sellers, and dealers. As a preliminary matter, manufacturers, sellers, and dealers must all register through the IRS Energy Credits Online Portal, as detailed in section 4.02 of this revenue procedure. Manufacturers who wish to become qualified manufacturers must follow the registration procedures in sections 4.02(1) of this revenue procedure. Sellers who are required to submit seller reports must follow the registration procedures in section 4.02(2) of this revenue procedure. Sellers who wish to become registered dealers and participate in the advance

payment program must follow the registration procedures in section 4.02(3) of this revenue procedure. A dealer, as defined is § 30D(g)(8) and the regulations thereunder, must follow the registration requirements in sections 4.02(2) and 4.02(3) of this revenue procedure to become a registered dealer and participate in the advance payment program.

.02 Registration through the IRS Energy Credits Online Portal

(1) *Qualified Manufacturer Registration through the IRS Energy Credits Online Portal.* An individual representative of the manufacturer must register through the IRS Energy Credits Online Portal and provide the required information to request to become a qualified manufacturer, consistent with section 4.01(1) of Revenue Procedure 2022-42. The manufacturer's representative will need to sign in or create an account on irs.gov in order to verify the manufacturer's business tax information and register. Help related to the IRS identity verification process can be found on the sign-in page or at www.irs.gov/registerhelp. This individual representative of the manufacturer must be currently authorized to legally bind the manufacturer in these matters. Starting December 2023, a manufacturer will be able to authorize more than one employee to make representations on its behalf through the IRS Energy Credits Online Portal.

(2) *Seller Registration through the IRS Energy Credits Online Portal.* An individual representative of the seller must register through the IRS Energy Credits Online Portal and provide the required information. The seller's representative will need to sign in or create an account on irs.gov to verify the seller's business tax information and register. Help related to the IRS identity verification process can be found on the sign-in page or at www.irs.gov/registerhelp. This individual representative of the seller must be currently authorized to legally bind the seller in these matters. Starting December 2023, a seller will be able to authorize more than one employee to make representations on its behalf through the IRS Energy Credits Online Portal. At the time of registration through the IRS Energy Credits Online Portal, a seller must provide the information listed in section 4.02(2)(a) through (c) and (f) of

this revenue procedure and make certifications listed in section 4.02(d) and (e) of this revenue procedure:

(a) Seller name, business address, phone number, and email address.

(b) Seller Taxpayer Identification Number (TIN) or Employer Identification Number (EIN).

(c) Proof of a State, District of Columbia, Indian tribal government, or Alaska Native Corporation issued license to sell vehicles (for § 25E sellers).

(d) Certification that, in the event a buyer returns a vehicle within 30 days of the time of sale, the seller will update the seller report.

(e) In the case of a previously-owned clean vehicle, certification that the seller will provide each taxpayer with the following information:

(i) That the model year of the vehicle is at least two years prior to the calendar year of sale; and

(ii) That the transfer is the first transfer of the vehicle since August 16, 2022, to a person other than the person with whom the original use of such vehicle commenced, excluding transfers to or between dealers.

(f) Such other information as may be required by the IRS Energy Credits Online Portal.

(3) *Dealer Registration through the IRS Energy Credits Online Portal.* An individual representative of the dealer must register through the IRS Energy Credits Online Portal to become an eligible entity that can participate in the advance payment program. The dealer's representative will need to sign in or create an account on irs.gov to verify the dealer's business tax information and register. Help related to the IRS identity verification process can be found on the sign-in page or at www.irs.gov/registerhelp. The registration and each certification must be completed by an individual representative of the dealer who is currently authorized to legally bind the dealer in these matters. Starting December 2023, a dealer will be able to authorize more than one employee to make representations on its behalf through the IRS Energy Credits Online Portal. A dealer must register at least 15 days prior to being able to receive any advance payments described in section 8 of this revenue procedure. A dealer may register

through the IRS Energy Credits Online Portal at any time after the publication of this revenue procedure, but will not become an eligible entity until January 1, 2024. The required information and certifications may be updated in guidance published in the Internal Revenue Bulletin or via the IRS Energy Credits Online Portal. At the time of registration, a dealer must provide the information listed in section 4.02(3)(a), (b) and (g) of this revenue procedure and make each certification listed in section 4.02(3)(c) through (f) of this revenue procedure:

(a) The information listed in section 4.02(2)(a) through (f) of this revenue procedure.

(b) Bank account information of the dealer, for purposes of receiving electronic payments, as described in section 8.03 of this revenue procedure. Use of a foreign bank account is not permitted.

(c) Certification that the dealer will provide each taxpayer with the following information:

(i) For purposes of the § 30D credit, the manufacturer's suggested retail price (MSRP) of the new clean vehicle, or, for purposes of the § 25E credit, the sale price of the previously-owned clean vehicle;

(ii) The maximum amount of the credit allowable and any other incentive available for the purchase of such vehicle;

(iii) The amount provided by the dealer to such taxpayer as a condition of the taxpayer making the transfer election. This amount must equal the amount of the credit potentially allowable as to the purchase of the vehicle and such amount may be provided in the form of cash or a down payment or partial payment for the purchase of the vehicle;

(iv) The modified adjusted gross income (modified AGI) limitations provided in §§ 30D(f)(10) (in the case of the § 30D credit) or 25E(b)(2) (in the case of the § 25E credit), as applicable; and

(d) Certification that, no later than the time of sale of the vehicle, the dealer will make the payment to the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) in an amount equal to the credit otherwise allowable to such taxpayer.

(e) Certification that the dealer, with respect to any incentive otherwise

available for the purchase of a vehicle for which a § 30D credit or § 25E credit is allowed, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, ensured that:

(i) The availability or use of such incentive does not limit the ability of a taxpayer to make a transfer election, and

(ii) Such election does not limit the value or use of such incentive.

(f) Certification that, in the event a buyer returns a vehicle within 30 days of the time of sale, and the dealer fails to report such return through the IRS Energy Credits Online Portal, the dealer will have an excessive payment of any advance payment amount received for the sale of such vehicle.

(g) Such other information as may be required by the IRS Energy Credits Online Portal.

.03 *Reliance.* For purposes of the advance payment program, taxpayers and sellers may rely on information and certifications of a qualified manufacturer (as defined in § 30D(d)(3)) described in section 4 of Rev. Proc. 2022-42 providing that a vehicle is eligible for a § 30D credit or a § 25E credit, as applicable. Section 4.03 of this revenue procedure allows reliance solely with respect to information regarding the vehicle's eligibility for the § 30D credit or § 25E credit. For example, such reliance does not apply to information regarding the taxpayer's use of such vehicle, whether the taxpayer satisfies the modified AGI limitations, or whether the taxpayer is a qualified buyer as defined in § 25E(c)(3).

.04 *IRS Verifications.*

(1) At the time of seller registration through the IRS Energy Credits Online Portal described in section 4.02(2) of this revenue procedure, the IRS will validate the seller's business tax information, including the North American Industry Classification System (NAICS) Code. In the event the seller fails the validation process, the seller will be notified by the IRS.

(2) At the time of dealer registration through the IRS Energy Credits Online Portal described in section 4.02(3) of this revenue procedure, the IRS will confirm dealer tax compliance as well as validate the dealer's business tax information, including the NAICS Code and the dealer's bank account information. In

the event the dealer fails the validation process, the dealer will be notified by the IRS.

.05 IRS Notification Regarding Dealer Registration. The IRS will notify the dealer if its registration is accepted or rejected after considering the information submitted by the dealer under section 4.02(3) and the verification checks under section 4.05(2) of this revenue procedure. If the dealer's registration is accepted, the IRS will issue a unique dealer identification number to the dealer, which will be available through the IRS Energy Credits Online Portal.

.06 Right to Administrative Review if Dealer Registration is Rejected. If a dealer's registration is rejected, the dealer will have the opportunity to request administrative review of the IRS's determination to the IRS. During the period that the issue is pending, the dealer cannot participate in the advance payment program.

SECTION 5. TRANSFER ELECTION DISCLOSURE OBLIGATIONS BETWEEN THE DEALER AND TAXPAYER

.01 Disclosure to Taxpayer Electing to Transfer the Credit. Not later than the time of sale, the registered dealer must provide the taxpayer electing to transfer a credit under § 30D(g) or § 25E(f) a written disclosure containing the information described in sections 4.02(2)(e) and 4.02(3)(c) of this revenue procedure, signed under penalty of perjury by a person currently authorized to bind the dealer in these matters, and a copy of the seller report described in section 7.03 of this revenue procedure.

.02 Disclosure Obligation of Taxpayer Electing to Transfer the Credit. Not later than the time of sale, the taxpayer electing to transfer the credit under § 30D(g) or § 25E(f) must furnish the information listed in sections 5.02(1) through 5.02(3) and 5.02(11) of this revenue procedure to the registered dealer and make the attestations in sections 5.02(4) through 5.02(10) through the IRS Energy Credits Online Portal under penalty of perjury. Not later than the time of sale, the registered dealer must upload the information provided by the electing taxpayer in sections 5.02(1) through 5.02(3) and 5.02(11)

of this revenue procedure through the IRS Energy Credits Online Portal. The information the electing taxpayer must furnish is as follows:

(1) Date of the taxpayer's transfer election;

(2) The taxpayer's TIN;

(3) A photocopy of the taxpayer's valid, government-issued photo identification document;

(4) An attestation, that either:

(a) The taxpayer's prior year modified AGI did not exceed the modified AGI limitations, provided in §§ 30D(f)(10) (in the case of the § 30D credit) or 25E(b)(2) (in the case of the § 25E credit), as applicable, or, if not known, to the best of the taxpayer's knowledge and belief, the taxpayer's prior year modified AGI did not exceed such limitation, or

(b) To the extent of the taxpayer's knowledge and belief, the taxpayer's current year modified AGI did not exceed the modified AGI limitation;

(5) In the case of the § 30D credit, an attestation that the vehicle will be used predominantly for personal use;

(6) In the case of the § 25E credit, an attestation that the taxpayer is a "qualified buyer" as defined § 25E(c)(3);

(7) An attestation that the taxpayer will file an income tax return for the taxable year in which the vehicle is placed in service on or before the due date of the return (including extensions), reporting the taxpayer's eligibility for the § 30D or § 25E credit, as applicable, including the vehicle's VIN, and the taxpayer's election to transfer the credit to the eligible entity, and repaying any credit amounts subject to recapture, if applicable;

(8) An attestation that the taxpayer is making this election prior to placing the vehicle in service and that the taxpayer has made no more than two transfer elections (including the election for which the attestation is being made) during the taxable year;

(9) An attestation that in the event the taxpayer's modified AGI exceeds the applicable modified AGI limitations, they will repay the amount received as an addition to tax for the tax year the vehicle was placed in service.

(10) An attestation that the taxpayer has voluntarily elected to transfer the credit; and

(11) Such other information as may be required by the IRS Energy Credits Online Portal.

SECTION 6. TAXPAYER ELECTION TO TRANSFER CREDIT

.01 Taxpayer Election. A taxpayer may make an election to transfer the credit under § 30D or § 25E to a registered dealer no later than the time of sale. A transfer election will be considered made by a taxpayer upon providing the information described in section 5.02 of this revenue procedure to the registered dealer.

.02 Two Transfer Elections per year. A taxpayer may make no more than two transfer elections per taxable year, consisting of either two § 30D credits or one § 30D credit and one § 25E credit. In the case of a joint return, each individual taxpayer may make no more than two transfer elections per taxable year.

.03 Amount of Transferred Credit. A taxpayer making a transfer election must transfer the entire amount of the credit allowable to the taxpayer to the registered dealer.

SECTION 7. QUALIFIED MANUFACTURER WRITTEN AGREEMENT AND REPORTS AND SELLER REPORTS

.01 Qualified Manufacturer Written Agreement. Beginning January 1, 2024, to be considered a qualified manufacturer, manufacturers must have entered into a written agreement pursuant to section 4.01 of Rev. Proc. 2022-42 through the IRS Energy Credits Online Portal. The required attestation must be completed by a person currently authorized to bind the manufacturer in these matters. Manufacturers will not be considered qualified manufacturers until they have entered into written agreements with the IRS. Manufacturers who previously registered and filed written agreements under the procedures in section 6.01 of Rev. Proc. 2022-42 must enter into new written agreements through the IRS Energy Credits Online Portal. The procedures for manufacturers to enter into written agreements prior to January 1, 2024 will remain as described in section 6.01 of Rev. Proc. 2022-42.

.02 Written Reports by Qualified Manufacturers. Beginning January 1, 2024, qualified manufacturers must file the monthly written reports described in section 4.02 of Rev. Proc. 2022-42 through the IRS Energy Credits Online Portal by the fifteenth of the month following the month to which each monthly written report relates. Qualified manufacturers may file reports more frequently than once a month. Beginning January 1, 2024, manufacturers who previously registered as qualified manufacturers under the procedures in section 6.01 of Rev. Proc. 2022-42 must file their written reports through the IRS Energy Credits Online Portal. The procedures for manufacturers to file written reports prior to January 1, 2024, will remain as described in section 6.02 of Rev. Proc. 2022-42.

.03 Seller Reports.

(1) Time and Manner of Filing Seller Reports. For sales for which the vehicle is placed in service by the taxpayer on or after January 1, 2024, a seller must file the seller report described in section 5.01 of Rev. Proc. 2022-42 through the IRS Energy Credits Online Portal within 3 calendar days of the date of sale. Whenever feasible, the seller report should be filed in conjunction with the completion of the sale and at the time the seller report is provided to the purchaser. A seller may submit seller reports through the IRS Energy Credits Online Portal prior to January 1, 2024.

(2) Requirement to Furnish Copy of Seller Report to Taxpayer. The seller must provide the seller report as well as the confirmation of the submission of the seller report through the IRS Energy Credits Online Portal to the taxpayer purchasing the vehicle within 3 calendar days of the submission of the seller report through the IRS Energy Credits Online Portal.

(3) IRS Rejection of Seller Report. In the event that the information provided in the seller report does not match the IRS's records, the IRS may reject the seller report and notify the seller. In the event the seller report is rejected, a dealer will not be eligible for an advance payment under section 8 of this revenue procedure. The seller must notify the buyer within 3 calendar days of the IRS's rejection of the seller report.

(4) Updating and Rescinding of Seller Reports. In the event the seller wishes to

update or rescind certain information on a seller report for a scrivener's error or cancellation of sale, it must do so through the IRS Energy Credits Online Portal as promptly as possible after the original submission occurred, either through an update of the original seller report (if within 48 hours of the original submission of the report) or through submission of a new seller report correcting the prior information. In the event of a return by the buyer, the seller must file a new seller report noting the return. The IRS will acknowledge submission of the report of the return. The seller must notify the buyer within 3 calendar days of updating or rescinding the seller report, and provide the buyer a copy. The seller must also notify the buyer within 3 calendar days of the IRS's rejection of the updated or rescinded report.

SECTION 8. ADVANCE PAYMENT TO REGISTERED DEALERS

.01 Information Required for Advance Payments. To receive advance payments for each taxpayer's transfer election, the registered dealer must, at the time of sale of the new clean vehicle or previously-owned clean vehicle, as applicable, provide the vehicle's VIN, the seller report, and the taxpayer disclosure information in section 5.02 of this revenue procedure through the IRS Energy Credits Online Portal. The information must be provided by a person currently authorized to bind the registered dealer in these matters.

.02 Dealer Tax Compliance Checks. In order to participate in the advance payment program, the dealer must be in dealer tax compliance. Prior to the disbursement of advance payments as described in this revenue procedure, and on a continuing and regular basis, the IRS will conduct dealer tax compliance checks to ensure dealers remain in dealer tax compliance.

.03 Time and Manner of Payments. After the registered dealer provides the information required in section 8.01 of this revenue procedure through the IRS Energy Credits Online Portal, and provided the seller report is accepted and the registered dealer is in dealer tax compliance, an electronic advance payment

will be disbursed to the most recent bank account specified by the registered dealer. No advance payments will be disbursed by paper checks.

SECTION 9. RECORDKEEPING

.01 Registered Dealer Recordkeeping Obligations. The registered dealer must retain records for each taxpayer who makes a transfer election in accordance with section 6 of this revenue procedure for a period of three years after the transfer election is made. The record for each taxpayer must include the information described in section 5.02 of this revenue procedure.

.02 Seller Recordkeeping Obligations. The seller must retain records for each seller report submitted in accordance with section 7.03 of this revenue procedure for a period of three years after the report is filed with the IRS Energy Credits Online Portal.

SECTION 10. SUSPENSION OF REGISTERED DEALER ELIGIBILITY

.01 Suspension of Eligibility. The IRS may suspend a registered dealer's eligibility to participate in the advance payment program for any of the following reasons:

(1) The IRS determines that the registered dealer provided inaccurate information to the taxpayer regarding the vehicle's eligibility or the taxpayer's eligibility for the advance payment program;

(2) The IRS determines that the registered dealer provided inaccurate information to the IRS regarding the vehicle's eligibility or taxpayer's eligibility for the advance payment program;

(3) The IRS determines that the registered dealer provided inaccurate information to the IRS regarding its eligibility for the advance payment program;

(4) The registered dealer fails to satisfy the dealer tax compliance requirement in section 8.02 of this revenue procedure;

(5) The IRS determines that the bank account information that the dealer provided through the IRS Energy Credits Online Portal is not valid;

(6) The dealer fails to report the return of a vehicle through the IRS Energy Credits Online Portal as required in section 4.04(f) of this revenue procedure;

(7) The IRS determines it is necessary to suspend the registered dealer's registration to prevent abuse of the advance payment program.

.02 Notification by the IRS to the Dealer. If the IRS determines a registered dealer's eligibility for the advance payment program should be suspended pursuant to section 10.01 of this revenue procedure, the IRS will notify the registered dealer of such determination.

.03 Correction. The registered dealer will be notified of a suspension from the advance payment program as well as the reason for the suspension. The registered dealer will be given an opportunity to correct any errors that caused its suspension. The registered dealer cannot participate in the advance payment program from the moment it is notified of the suspension, unless and until the suspension is lifted.

.04 Revocation of Dealer's Registration. If the registered dealer fails to correct the errors that caused the suspension from the advance payment program within a year of the suspension, the registered dealer's registration will be revoked, and the procedures in section 11 of this revenue procedure will apply.

SECTION 11. REVOCATION OF REGISTERED DEALER ELIGIBILITY AND RE-REGISTRATION

.01 Revocation of Dealer Eligibility. The IRS may revoke a dealer's registration to receive credits transferred under §§ 30D(g) or 25E(f) and be eligible for advance payments of such credits for any of the following reasons:

(1) The registered dealer fails to comply with any of the registration requirements in section 4 of this revenue procedure;

(2) The registered dealer fails to satisfy the dealer tax compliance requirement in section 8.02 of this revenue procedure;

(3) The registered dealer loses its license to sell vehicles;

(4) The IRS determines that the registered dealer provided inaccurate information to the taxpayer regarding the vehicle eligibility or the taxpayer's eligibility for the advance payment program, in circumstances where the IRS determines that revocation, rather than suspension, as

referenced in section 10.01(1) of this revenue procedure, is appropriate;

(5) The IRS determines that the registered dealer provided inaccurate information to the IRS regarding vehicle eligibility or taxpayer eligibility for the advance payment program, in circumstances where the IRS determines that revocation, rather than suspension, as referenced in section 10.01(2) of this revenue procedure, is appropriate;

(6) The registered dealer fails to retain records for each taxpayer who makes a transfer election for a period of three years;

(7) The registered dealer's registration has been suspended three times in the preceding year in accordance with section 10 of this revenue procedure.

.02 Notification by the IRS to the Dealer. If the IRS determines a registered dealer's eligibility for the advance payment program should be revoked, the IRS will notify the registered dealer within 30 days of such determination.

.03 Right to Administrative Review. If a registered dealer is notified of the revocation of its eligibility for the advance payment program, it will have the opportunity to administrative review of the IRS's determination. During the period that the issue is pending, the registered dealer cannot participate in the advance payment program. Once the IRS makes a final determination, a registered dealer's registration will either be confirmed as revoked, fully reinstated, or reinstated under conditions as determined by the IRS.

.04 Re-Registration of Dealer. No earlier than one calendar year after the date of the notification described in section 11.02 of this revenue procedure revoking a registered dealer's registration, a registered dealer may apply to register again through the IRS Energy Credits Online Portal, as described in section 4.03(c) of this revenue procedure.

.05 Non Eligibility for Re-Registration. After a registered dealer's registration has been revoked, including any final IRS determinations following the dealer's request for an administrative review of the revocation, if applicable, on three separate occasions, the registered dealer will be permanently barred from re-registering with the IRS and participating in the advance payment program.

SECTION 12. EFFECT ON OTHER DOCUMENTS

The requirements of sections 7.01 and 7.02 of this revenue procedure regarding filing a written agreement to be considered a qualified manufacturer and filing monthly written reports through the IRS Energy Credits Online Portal supersede the timing and manner of filing requirements in sections 6.01 and 6.02 of Rev. Proc. 2022-42. The requirements of section 7.03(1) of this revenue procedure regarding submitting seller reports through the IRS Energy Credits Online Portal supersede the timing and manner of filing requirements in sections 5.01 and 6.03 of Rev. Proc. 2022-42.

SECTION 13. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2311.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 4.02, 5.01, 5.02, 7.01, 7.02, 7.03(1), 8.01, 9.01, and 9.02. This information is collected and retained to ensure that dealers and sellers properly register with the IRS, properly submit records to claim the transfer election, and properly retain records. This information will be used to determine whether the dealer is eligible for the claimed advance payment election. The collection of information is voluntary to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 296,688 hours.

The estimated annual burden per respondent is one hour to complete the dealer registration, as required under this revenue procedure, and the estimated number of respondents is 52,000. The estimated annual burden per respondent is .25 hours to complete the advanced

payment uploading of information, as required under this revenue procedure and the estimated number of respondents is 978,750. The estimated annual frequency of responses is 1,030,750.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 14. DRAFTING INFORMATION

The principal author of this revenue procedure is the Office of Associate

Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Department of the Treasury and the IRS participated in its development. For further information regarding this revenue procedure, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Preparer Tax Identification Number (PTIN) User Fee Update

REG-106203-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim final rule.

SUMMARY: In the Rules and Regulations section of this issue of the *Federal Register*, the Department of the Treasury (Treasury Department) and the IRS are issuing interim final regulations that amend the current regulations to reduce the amount of the user fee imposed on tax return preparers to apply for or renew a preparer tax identification number (PTIN). The text of the interim final regulations also serves as the text of these proposed regulations.

DATES: Electronic or written comments and requests for a public hearing must be received by December 4, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-106203-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Treasury Department and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG-106203-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jamie Song at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738; concerning submissions of comments or requests for a public hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Interim final regulations in the Rules and Regulations section of this issue of the *Federal Register* amend regulations under 26 CFR part 300 setting a user fee for individuals who apply for or renew a PTIN. The Independent Offices Appropriation Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993). The text of the interim final regulations also serves as the text of these proposed regulations. The preamble to the interim final regulations explains the interim final regulations and these proposed regulations.

Special Analyses

I. Regulatory Planning and Review

The OMB’s Office of Information and Regulatory Analysis has determined that this regulation is not significant and subject to review under section 6(b) of Executive Order 12866.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact

on a substantial number of small entities. The proposed regulations affect individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can have a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to have a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to have a PTIN. The Treasury Department and the IRS estimate that approximately 847,555 individuals will apply annually for an initial or renewal PTIN. Although the interim final regulations will likely affect a substantial number of small entities, the economic impact on those entities is not significant. The interim final regulations will establish an \$11 fee per application or renewal (plus \$8.75 payable directly to the contractor), which is a reduction from the previously established fee and will not have a significant economic impact on a small entity. Accordingly, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any

rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Submission to Small Business Administration

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the *Federal Register*.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these regulations is Jamie Song, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.11 is amended by revising paragraphs (b) and (d) to read as follows:

§300.11 Fee for obtaining a preparer tax identification number.

* * * * *

(b) [The text of proposed § 300.11(b) is the same as the text of § 300.11(b) published elsewhere in this issue of the *Federal Register*].

* * * * *

(d) [The text of proposed § 300.11(d) is the same as the text of § 300.11(d) published elsewhere in this issue of the *Federal Register*].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register September 29, 2023, 4:15 p.m., and published in the issue of the Federal Register for October 4, 2023, 88 FR 68525)

Notice of Proposed Rulemaking

Transfer of Clean Vehicle Credits Under Section 25E and Section 30D

REG-113064-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding certain clean vehicle credits as established by the Inflation Reduction Act of 2022. The proposed regulations would provide guidance for taxpayers who purchase qualifying previously-owned clean vehicles or purchase qualifying new clean vehicles and intend to transfer the amount of any previously-owned clean vehicle credit or new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed regulations also would provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or new clean vehicle credits, and rules regarding recapture of the credits. The proposed regulations would affect taxpayers intending to transfer previously-owned clean vehicle or new clean vehicle credits and eligible entities to whom the credits are transferred, as well as taxpayers who purchased previously-owned clean vehicles or new clean vehicles in the event the vehicles cease being eligible for the credits. The proposed regulations also provide guidance on the meaning of three new definitions added to the exclusive list of “mathematical or clerical errors” relating to certain assessments of tax without a notice of deficiency.

DATES: Written or electronic comments and requests for a public hearing must be received by December 11, 2023. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking

Portal at <https://www.regulations.gov> (indicate IRS and REG-113064-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG-113064-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317-6901 (not a toll-free number) or send an email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added section 25E to the Internal Revenue Code (Code) and amended section 30D of the Code. Section 25E provides a credit (section 25E credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to a previously-owned clean vehicle that a taxpayer purchases and places in service. Section 30D provides a credit (section 30D credit) against the tax imposed by chapter 1 with respect to each new clean vehicle that a taxpayer purchases and places in service. Both the section 25E credit and section 30D credit are determined and allowable with respect to the taxable year in which the taxpayer places the previously-owned clean vehicle or new clean vehicle, as applicable, in service. In addition, several of the provisions of section 25E incorporate by

cross-reference some of the definitions and rules of section 30D. The IRA also amended section 6213 of the Code by adding three new definitions to the exclusive list of “mathematical or clerical errors” in section 6213(g)(2). These new definitions are set out in sections 6213(g)(2)(T), (U), and (V).

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 25E and 30D and to the Procedure and Administration Regulations (26 CFR part 301) under section 6213 (proposed regulations). The proposed regulations under section 30D supplement a notice of proposed rulemaking (REG-120080-22) published in the *Federal Register* (88 FR 23370) on April 17, 2023 (April 2023 proposed regulations) that contains initial proposed regulations under section 30D as amended by the IRA.

A. Section 30D New Clean Vehicle Credit

Section 30D was enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of the IRA. In general, the amendments made by section 13401 of the IRA to section 30D apply to vehicles placed in service after December 31, 2022, except as provided in section 13401(k)(2) through (5) of the IRA.

Effective beginning on April 18, 2023, section 30D(b) provides a maximum credit of \$7,500 per new clean vehicle, consisting of \$3,750 if certain critical minerals requirements are met and \$3,750 if certain battery components requirements are met. These requirements are described in section 30D(e)(1) and (2), respectively, and the April 2023 proposed regulations.

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, the section 30D credit is treated as a personal credit allowable under subpart A of part IV of

subchapter A of chapter 1. Section 30D(c)(2). However, the amount of the section 30D credit that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year business credit under section 38(b) instead of being allowed under section 30D. Section 30D(c)(1). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

The April 2023 proposed regulations addressed the case of mixed-use vehicles. Section 30D(c)(1) requires that so much of the section 30D credit that would be allowed under section 30D(a) for any taxable year (determined without regard to section 30D(c)) that is attributable to a depreciable vehicle must be treated as a general business credit under section 38 that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the use of which is 50 percent or more business use in the taxable year such vehicle is placed in service, the section 30D credit that would be allowed under section 30D(a) for that taxable year (determined without regard to section 30D(c)) that is attributable to such depreciable vehicle must be treated as a general business credit under section 38 that is listed in section 38(b)(30) for such taxable year (and not allowed under section 30D(a)). In the case of a depreciable vehicle the business use of which is less than 50 percent of a taxpayer’s total use of the vehicle for the taxable year in which the vehicle is placed in service, the taxpayer’s section 30D credit for that taxable year with respect to that vehicle must be apportioned as follows: (i) the portion of the section 30D credit corresponding to the percentage of the taxpayer’s business use of the vehicle is treated as a general business credit under section 30D(c)(1) (and not allowed under section 30D(a)); and (ii) the portion of the section 30D credit corresponding to the percentage of the taxpayer’s personal use of the vehicle is treated as a section 30D credit allowed under section 30D(a) pursuant to section 30D(c)(2).

The IRA added several special rules under section 30D(f) applicable to vehicles placed in service after December 31,

2022. These special rules include the rule in section 30D(f)(9) that requires a taxpayer to include on the taxpayer's return for the taxable year the vehicle identification number (VIN) of the vehicle for which the section 30D credit is claimed. In addition, section 30D(f)(10) denies the section 30D credit to certain high-income taxpayers. More specifically, section 30D(f)(10)(A) provides that no credit is allowed for any taxable year if (i) the lesser of (I) the modified adjusted gross income of the taxpayer for such taxable year, or (II) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (ii) the threshold amount (modified adjusted gross income (AGI) Limitation). New section 30D(f)(10)(B) provides that the threshold amount is (i) in the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), \$300,000, (ii) in the case of a head of household (as defined in section 2(b) of the Code), \$225,000, and (iii) in the case of any other taxpayer, \$150,000. New section 30D(f)(10)(C) defines "modified adjusted gross income" as adjusted gross income (AGI) increased by any amount excluded from gross income under sections 911, 931, or 933.

The IRA added new section 30D(g) to the Code, which allows the taxpayer to elect to transfer the section 30D credit in certain situations for vehicles placed in service after December 31, 2023. Section 30D(g)(1) provides that subject to such regulations or other guidance as the Secretary of the Treasury or her delegate (Secretary) determines necessary, a taxpayer may elect to transfer a section 30D credit with respect to a new clean vehicle to an eligible entity (vehicle transfer election). If the taxpayer who acquires a new clean vehicle makes a vehicle transfer election under section 30D(g) with respect to such vehicle, the section 30D credit that would otherwise be allowed to such taxpayer with respect to such vehicle is allowed to the eligible entity specified in such election (and not the taxpayer). Section 30D(g)(2) defines an "eligible entity" with respect to the vehicle for which the section 30D credit is allowed as the dealer that sold such vehicle to the taxpayer and that satisfies the following four requirements set forth in section 30D(g)(2)(A) through (D): (i) the dealer, subject

to section 30D(g)(4), must be registered with the Secretary for purposes of section 30D(g)(2), at such time, and in such form and manner, as the Secretary prescribes; (ii) the dealer, prior to the vehicle transfer election and not later than at the time of sale, must have disclosed to the taxpayer purchasing such vehicle the manufacturer's suggested retail price, the value of the section 30D credit allowed and any other incentive available for the purchase of such vehicle, and the amount provided by the dealer to such taxpayer as a condition of the vehicle transfer election; (iii) the dealer, not later than at the time of sale, must have paid the taxpayer (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) an amount equal to the credit otherwise allowable to such taxpayer; and (iv) the dealer with respect to any incentive otherwise available for the purchase of a vehicle for which a section 30D credit is allowed, including any incentive in the form of a rebate or discount provided by the dealer or manufacturer, must have ensured that the availability or use of such incentive does not limit the ability of a taxpayer to make a vehicle transfer election, and such election does not limit the value or use of such incentive.

Section 30D(g)(3) addresses the timing of the transfer and provides that any vehicle transfer election cannot be made by the taxpayer any later than the date on which the vehicle for which the section 30D credit is allowed is purchased.

Section 30D(g)(4) provides that upon determination by the Secretary that a dealer has failed to comply with the requirements described in section 30D(g)(2), the Secretary may revoke the dealer's registration.

Section 30D(g)(5) provides that with respect to any payment described in section 30D(g)(2)(C), such payment is not includible in the gross income of the taxpayer and is not deductible with respect to the dealer.

Section 30D(g)(6) addresses the application of certain other requirements to the transfer of credit and provides that in the case of any vehicle transfer election with respect to any vehicle: (i) the basis reduction and no double benefit requirements of section 30D(f)(1) and (2) apply to the taxpayer who acquired the vehicle in the

same manner as if the section 30D credit determined with respect to such vehicle were allowed to such taxpayer; (ii) the election in section 30D(f)(6) to not take the section 30D credit does not apply; and (iii) the VIN requirement of section 30D(f)(9) is treated as satisfied if the eligible entity provides the VIN of such vehicle to the Secretary in such manner as the Secretary may provide.

Section 30D(g)(7)(A) provides for the establishment of a program to make advance payments to eligible entities in an amount equal to the cumulative amount of the credits allowed with respect to any vehicles sold by such entity for which a vehicle transfer election described in section 30D(g)(1) has been made. Section 30D(g)(7)(B) provides that rules similar to the rules of section 6417(d)(6) of the Code apply for purposes of the advance payment rules, and section 30D(g)(7)(C) provides that for purposes of 31 U.S.C. 1324, the payments under section 30D(g)(7)(A) are treated in the same manner as a refund due from a credit provision referred to in 31 U.S.C. 1324(b)(2).

Section 30D(g)(8) defines the term "dealer" as a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian tribal government, or any Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m))) to engage in the sale of vehicles. Section 30D(g)(9) defines an "Indian tribal government" as the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of section 30D(g) (that is, August 16, 2022) pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Section 30D(g)(10) provides that in the case of any taxpayer who has made a vehicle transfer election with respect to a new clean vehicle and received a payment from an eligible entity, if the section 30D credit would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of the modified AGI limitations in section 30D(f)(10),

the income tax imposed on such taxpayer under chapter 1 for the taxable year in which such vehicle was placed in service must be increased by the amount of the payment received by such taxpayer.

No section 30D credit is allowed with respect to a vehicle placed in service after December 31, 2032. Section 13401(k)(4) of the IRA provides that the ability for a taxpayer to elect to transfer a section 30D credit under section 30D(g) applies to vehicles placed in service after December 31, 2023.

B. Section 25E Previously-Owned Clean Vehicles Credit

Section 13402 of the IRA added section 25E to the Code. Section 25E provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit (that is, the section 25E credit) is allowed for the taxable year in an amount equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle.

Section 25E(b)(1) sets a limitation based on modified adjusted gross income and provides that no section 25E credit is allowed for any taxable year if (A) the lesser of (i) the modified adjusted gross income of the taxpayer for such taxable year, or (ii) the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds (B) the threshold amount. The threshold amount is set forth in section 25E(b)(2) and varies based on a taxpayer's filing status. In the case of a taxpayer filing a joint return or who is a surviving spouse (as defined in section 2(a)), the threshold amount is \$150,000. In the case of a taxpayer who is a head of household (as defined in section 2(b)), the threshold amount is \$112,500. In the case of any other taxpayer, the threshold amount is \$75,000. Section 25E(b)(3) defines modified adjusted gross income as adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933.

Section 25E(c) defines certain terms for purposes of the section 25E credit. Section 25E(c)(1) defines a "previously-owned clean vehicle" as, with respect to a taxpayer, a motor vehicle that satisfies the following four requirements set

forth in section 25E(c)(1)(A) through (D): (i) the model year of the motor vehicle is at least 2 years earlier than the calendar year in which the taxpayer acquires such vehicle; (ii) the original use of the motor vehicle commences with a person other than the taxpayer; (iii) the motor vehicle is acquired by the taxpayer in a qualified sale, and (iv) the motor vehicle meets the requirements of section 30D(d)(1)(C), (D), (E), (F), and (H) (except for the original use requirement of section 30D(d)(1)(H)(iv)), or is a motor vehicle that satisfies the requirements under section 30B(b)(3)(A) and (B), and has a gross vehicle weight rating of less than 14,000 pounds.

Section 25E(c)(2) defines a "qualified sale" as a sale of a motor vehicle (i) by a dealer (as defined in section 30D(g)(8)), (ii) for a sale price which does not exceed \$25,000, and (iii) that is the first transfer since the date of enactment of the IRA (that is, August 16, 2022) to a qualified buyer other than the person with whom the original use of such vehicle commenced.

Section 25E(c)(3) defines a "qualified buyer" as, with respect to a sale of a motor vehicle, a taxpayer who is an individual with respect to whom no deduction is allowable with respect to another taxpayer under section 151, who purchases such vehicle for use and not for resale, and who has not been allowed a section 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

Section 25E(c)(4) defines a "motor vehicle" and "capacity" to have the meaning given to such terms in section 30D(d)(2) and (4), respectively.

Section 25E(d) provides that no section 25E credit is allowed with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the taxpayer's tax return for the taxable year. Section 25E(e) provides that rules similar to the rules of section 30D(f) (without regard to paragraph (10) or (11) thereof) apply for purposes of section 25E. Section 25E(f) provides that rules similar to section 30D(g) apply to the transfer of a section 25E credit for previously-owned vehicles (thus, a taxpayer also may elect to transfer a section 25E credit).

Section 25E applies to vehicles acquired after December 31, 2022. No section 25E credit is allowed with respect to a vehicle acquired after December 31,

2032. Section 13402(e)(2) of the IRA provides that the ability of a taxpayer to elect to transfer a section 25E credit under section 25E(f) applies to vehicles placed in service by the taxpayer after December 31, 2023.

C. Section 45W Qualified Commercial Clean Vehicle Credit

Section 13403(a) of the IRA added section 45W to the Code, which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033. A taxpayer can claim a section 45W credit for purchasing and placing in service a qualified commercial clean vehicle, as defined in section 45W(c), during the taxable year. Section 45W(b)(1) provides that the amount of the section 45W credit is the lesser of: 15 percent of the taxpayer's basis in the vehicle (30 percent in the case of a vehicle not powered by a gasoline or diesel internal combustion engine), or the incremental cost of the vehicle. Section 45W(b)(2) provides that the incremental cost of any qualified commercial clean vehicle is an amount equal to the excess of the purchase price for such vehicle over the purchase price of a comparable vehicle. Section 45W(b)(3) defines "comparable vehicle" to mean any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such vehicle. Section 45W(b)(4) provides that the 45W credit is limited to \$7,500 in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and \$40,000 for all other vehicles.

Section 45W(c) defines "qualified commercial clean vehicle" for purposes of the section 45W credit. Section 45W(d) establishes special rules for purposes of the section 45W credit, including the application of basis reduction, domestic usage, and recapture rules similar to those under section 30D(f) of the Code and a rule disallowing a double benefit under section 45W for a taxpayer claiming a new clean vehicle credit under section 30D. Section 45W(e) provides that no section 45W credit is allowed with respect to any vehicle unless the taxpayer includes the VIN of such vehicle on the tax return for the taxable year. Section 45W(f) grants the Secretary authority to issue regulations or

other guidance to carry out the purposes of section 45W, including regulations or other guidance relating to determination of the incremental cost of any qualified commercial clean vehicle.

D. Section 6213 restrictions applicable to deficiencies; petition to Tax Court

Section 6213(b)(1) authorizes the IRS to make certain assessments of mathematical or clerical errors without first issuing a notice of deficiency under section 6213(a). In lieu of a notice of deficiency giving the taxpayer 90 days to file a petition in the Tax Court, section 6213(b)(1) requires the IRS to provide the taxpayer notice that an assessment has been or will be made based on a mathematical or clerical error. Section 6213(b)(2)(A) provides that the taxpayer has 60 days to request an abatement of such assessment. If the taxpayer timely requests abatement, then the IRS must abate the assessment. If an assessment is abated, the IRS must first provide a notice of deficiency under section 6213(a) before the IRS can reassess the tax.

Math error assessments were first authorized by section 274(f) of the Revenue Bill of 1926. The legislative history provided that “in the case of a mere mathematical error appearing upon the face of the return, assessment of a tax due to such mathematical error may be made at any time, and that such assessment shall not be regarded as a deficiency notification.” H.R. Rep. No. 69-1, at 11 (1926). The Tax Reform Act of 1976 added section 6213(f)(2) (current section (g)(2)) to the Code, which defined “mathematical or clerical error” as: (A) an error in addition, subtraction, multiplication, or division shown on the return; (B) an incorrect use of an IRS table if the error is apparent from the existence of other information on the return; (C) inconsistent entries on the return; (D) an omission of information required to be supplied on the return in order to substantiate an item on that return; and (E) an entry of a deduction or credit item in an amount which exceeds a statutory limit which is either (a) a specified monetary amount or (b) a percentage, ratio, or fraction — if the items entering into the application of that limit appear on that return.

The definition of mathematical or clerical error as set out in 1976 contained only these five specific items, all of which could be ascertained directly from the face of a return. These items remain in current section 6213(g)(2)(A) – (E). Since that time, Congress has expanded the definition of “mathematical or clerical error” in section 6213(g)(2) several times, and in 1998, added flush language to section 6213(g)(2) that applies to all section 6213(g)(2) subparagraphs: “A taxpayer shall be treated as having omitted a correct TIN [taxpayer identification number] for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.” The legislative history indicates that Congress added this language to clarify that a correct TIN is one that was assigned by the Social Security Administration (SSA) or the IRS to the individual identified on the return, and that there should be no inconsistencies between the data that is reported on the return and the data from the agency issuing the TIN. H.R. Conf. Rep. No. 825, 105th Cong. 2d Sess. 1588 (1998).

II. Prior Guidance

A. Notice 2022-46

On October 5, 2022, the Treasury Department and the IRS published Notice 2022-46, 2022-43 I.R.B. 302. The notice requested general comments on issues arising under sections 25E and 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals and battery components; (3) foreign entities of concern; (4) recordkeeping and reporting; (5) eligible entities; (6) elections to transfer and advance payments; and (7) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters’ interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. Revenue Procedure 2022-42

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible credits under these sections. In addition, Revenue Procedure 2022-42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. April 2023 Proposed Regulations

On April 17, 2023, the Treasury Department and the IRS published the April 2023 proposed regulations in the *Federal Register*, 88 FR 23370, which provided proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use and other special rules; and additional proposed rules related to the critical mineral and battery component requirements. The deadline to submit public comments expired on June 16, 2023.

D. Revenue Procedure 2023-33

On October 6, 2023, in addition to filing this notice of proposed rulemaking for public inspection, the Treasury Department and the IRS released Revenue Procedure 2023-33, which will be published on October 23, 2023, in Internal Revenue Bulletin 2023-43, to provide guidance for taxpayers electing to transfer credits under section 25E or 30D and for eligible entities receiving advance payments of credits under sections 30D and 25E. This revenue procedure sets forth the procedures under sections 30D(g) and 25E(f) for the transfer of the previously-owned clean vehicle credit and the new clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the IRS, the procedures for the revocation and suspension of that registration, and the establishment of an advance payment

program to eligible entities. In addition, this revenue procedure supersedes sections 5.01 and 6.03 of Revenue Procedure 2022-42, providing new information for the timing and manner of submission of seller reports, respectively. This revenue procedure also supersedes sections 6.01 and 6.02 of Revenue Procedure 2022-42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

Explanation of Provisions

I. Proposed Section 25E Regulations.

A. Overview

Section 25E(a) provides that, in the case of a qualified buyer who during a taxable year places in service a previously-owned clean vehicle, an income tax credit is allowed for the taxable year equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle. Proposed §1.25E-1(a) would state the general rule that an income tax credit is available under section 25E for a qualified buyer of a previously-owned clean vehicle placed in service during the taxable year in an amount equal to the lesser of: (1) \$4,000, or (2) the amount equal to 30 percent of the sale price with respect to such vehicle. Proposed §1.25E-1(b) would provide definitions that apply for purposes of section 25E and the proposed section 25E regulations (that is, proposed §§1.25E-1 through 1.25E-3). Proposed §1.25E-1(c) would provide rules regarding the modified adjusted gross income limitation. Proposed §1.25E-1(d) would provide rules regarding multiple owners of a vehicle. Proposed §1.25E-2 would provide special rules under section 25E(e). Proposed §1.25E-3 would provide rules regarding the election to transfer the 25E credit under section 25E(f).

As discussed later in this Explanation of Provisions section, the proposed rules under section 25E also include severability clauses and generally are proposed to apply to taxable years beginning after the

date these regulations are published in the *Federal Register*.

B. General rules for purposes of section 25E

1. Limitations on Modified Adjusted Gross Income

Proposed §1.25E-1(c)(1) would provide, consistent with section 25E(b), limitations based on the amount of a taxpayer's modified adjusted gross income, proposing that no credit is allowed under section 25E for any taxable year if the lesser of the modified adjusted gross income of the taxpayer for such taxable year, or, the modified adjusted gross income of the taxpayer for the preceding taxable year, exceeds the threshold amount. Proposed §1.25E-1(c)(2), consistent with section 25E(b)(2), would define the "threshold amount" as, in the case of a joint return or a surviving spouse (as defined in section 2(a)), \$150,000; in the case of a head of household (as defined in section 2(b)), \$112,500; and in any other case, \$75,000. Proposed §1.25E-1(b)(3) would define "modified adjusted gross income" as adjusted gross income increased by any amount excluded from gross income under sections 911, 931, or 933 of the Code. Proposed §1.25E-1(c)(3) would provide that if the taxpayer's filing status for the taxable year differs from the taxpayer's filing status in the preceding taxable year, the taxpayer satisfies the limitation if the taxpayer's modified AGI does not exceed the threshold amount in either year based on the applicable filing status for that taxable year. This proposed rule is consistent with proposed §1.30D-4(b)(4) in the April 2023 proposed regulations.

2. Limitation on Multiple Owners

Proposed §1.25E-1(d)(1) would provide that the amount of the section 25E credit attributable to a previously-owned clean vehicle may be claimed on only one tax return. In the event a previously-owned clean vehicle is placed in service by multiple owners, no allocation or proration of the section 25E credit is available. This proposed rule is necessary because the structure of section 25E provides for one taxpayer to claim the section 25E credit

per vehicle placed in service. See generally section 25E(a), (c)(3), (e) (providing for rules similar to section 30D(f)(8) and (9)) and section 6213(g)(2)(U) of the Code. Section 25E does not contain rules for allocation or proration of the section 25E credit with respect to a single vehicle to multiple taxpayers placing that vehicle in service, and such an allocation or proration would present administrative challenges. Proposed §1.25E-1(d)(2) would provide that for seller reporting, the name and taxpayer identification number of the vehicle owner claiming the section 25E credit must be listed on the seller report pursuant to sections 25E(c)(1)(D)(i) and 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller report. This proposed rule is consistent with proposed §1.30D-4(c) in the April 2023 proposed regulations.

C. Definitions for purposes of section 25E

1. Dealer

Proposed §1.25E-1(b)(1) would define "dealer" by reference to the statutory definition provided in section 25E(c)(2)(A) and section 30D(g) except that the term does not include persons licensed solely by a territory of the United States, and does include a dealer licensed in any jurisdiction described in section 30D(g) (other than one exclusively licensed in a territory) that makes sales at sites outside of the jurisdiction in which its licensed. The dealer does not include persons licensed solely by a territory because clean vehicle credits generally are not allowed for vehicles used predominantly outside of the 50 States and the District of Columbia. See sections 30D(f)(4), 25E(e), 50(b)(1), and 7701(a)(9) of the Code. In addition, United States citizens who are bona fide residents of U.S. territories are generally ineligible for Federal tax credits. See sections 931, 932, 933, and former section 935 of the Code. To allow for flexibility, especially in the case of direct-to-consumer sales, the proposed definition of dealer includes a dealer licensed in any jurisdiction described in section 30D(g) (other than one exclusively licensed in a U.S. territory) that makes sales in jurisdictions in which it may not be licensed.

2. Incentive

Proposed §1.25E-1(b)(2) would define “incentive,” for purposes of the sale price definition in proposed §1.25E-1(b)(9), as any reduction in total sale price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and proposed §1.25E-3.

3. Modified Adjusted Gross Income

Proposed §1.25E-1(b)(3) would define “modified adjusted gross income” by reference to the statutory definition provided in section 25E(b)(3).

4. Placed in Service

Proposed §1.25E-1(b)(4) would provide that a previously-owned clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle. This proposed definition is consistent with the meaning of “placed in service” for purposes of other provisions of the Code under which property is considered to be “placed in service” when the property is “placed in a condition or state of readiness and availability for a specifically assigned function” and as “the date on which the owner of the vehicle took actual possession of the vehicle.” See §§ 1.46-3(d)(1)(ii) and (d)(4) (i), 1.179-4(e), and 145.4051-1(c)(2); see also § 1.1250-4(b)(2); *Consumers Power Co. v. Commissioner*, 89 T.C. 710 (1987); *Noell v. Commissioner*, 66 T.C. 718, 728–729 (1976).

5. Previously-owned Clean Vehicle

Proposed §1.25E-1(b)(5) would define “previously-owned clean vehicle” by reference to the statutory definition provided in section 25E(c)(1).

6. Qualified Buyer

Proposed §1.25E-1(b)(6), consistent with section 25E(c)(3), would define

“qualified buyer” as, with respect to a sale of a motor vehicle, a taxpayer who is an individual, who purchases such vehicle for use and not for resale, with respect to whom no deduction is allowable to another taxpayer under section 151, and who has not been allowed a section 25E credit for any sale during the 3-year period ending on the date of the sale of such vehicle.

7. Qualified Manufacturer

Proposed §1.25E-1(b)(7) would define “qualified manufacturer” by reference to section 30D(d)(3).

8. Qualified Sale

Section 25E(c)(2) defines “qualified sale” as a sale of a motor vehicle by a dealer (as defined in section 30D(g)(8)), for a sale price which does not exceed \$25,000, and which is the first transfer since August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced. Proposed §1.25E-1(b)(8)(i) would define “qualified sale” as a sale of a motor vehicle by a dealer (as defined in proposed §1.25E-1(b)(1)) for a sale price which does not exceed \$25,000, and which is the first transfer since August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced.

9. First Transfer Rule

Proposed §1.25E-1(b)(8)(ii) would provide the first transfer rule, which proposes that to be a qualified sale, a transfer must be the first transfer of the previously-owned clean vehicle since August 16, 2022, as shown by the vehicle history of such vehicle, after the sale to the original owner. The proposed first transfer rule would provide certainty that the previously-owned clean vehicle is eligible for the section 25E credit, since the dealer and taxpayer may not otherwise know if the transfer was a qualified sale due to the difficulties in

determining whether previous transfers were to qualified buyers. For example, dealers and taxpayers would not be able to determine whether a previous transfer of the vehicle as a used vehicle was to an individual or to a taxpayer who is not a dependent. The taxpayer would be able to rely on the dealer’s representation of the vehicle history in determining whether the first transfer rule is satisfied, provided the seller report is accepted by the IRS. However, taxpayers would also be encouraged to independently examine the vehicle history to confirm whether the first transfer rule is satisfied, using publicly available tools.¹

For purposes of the proposed first transfer rule, the proposed regulations would ignore a transfer to or between dealers. The definition of qualified sale in section 25E(c)(2) requires that a sale must be by a dealer to an individual for the buyer to be able to claim the section 25E credit. If a transfer to a dealer were taken into account as a transfer, the vast majority of eligible vehicles would never qualify for the section 25E credit because a dealer (itself ineligible for the credit) selling a used vehicle will have acquired the vehicle from the prior owner (for example, as a trade-in) before selling the vehicle as a used vehicle. Treating transfers to dealers as a transfer would thus frustrate Congress’s purpose in enacting section 25E. In addition, the Treasury Department and the IRS understand that transfers between dealers generally do not result in a change of title that would appear on a vehicle history. Accordingly, selling or trading in a vehicle to a dealer for resale should not disqualify the vehicle for purposes of the first transfer rule.

Examples illustrating the first transfer rule are provided in proposed §1.25E-1(e).

10. Sale Price

Proposed §1.25E-1(b)(9) would define the “sale price” of a previously-owned clean vehicle as the total sale price agreed upon by the buyer and dealer in a written contract at the time of sale, including any delivery charges

¹A list of approved National Motor Vehicle Title Information System data providers can be found at: vehiclehistory.bja.ojp.gov/nmvtis_vehiclehistory.

and after the application of any incentives, but excluding separately-stated taxes and fees required by law. The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value. This proposed definition of sale price would include fees and charges imposed by the dealer to prevent dealers from allocating a portion of the price of the previously-owned clean vehicle to separately stated fees (other than those required by law) and charges to avoid the \$25,000 sales price cap in section 25E(c)(2)(B). This proposed definition does not include separate financing, extended warranties, insurance, or maintenance service charges.

11. Section 25E Regulations

Proposed §1.25E-1(b)(10) would define “section 25E regulations” to mean proposed §§1.25E-1, 1.25E-2, and 1.25E-3.

12. Seller Report

Proposed §1.25E-1(b)(11) would define “seller report” as the report described in section 25E(c)(1)(D)(i) by reference to section 30D(d)(1)(H) and provided by the dealer of a vehicle to the taxpayer and the IRS in the manner provided in, and containing the information described in Revenue Procedure 2023-33. Seller reports must be provided to the IRS electronically. See section II of this Explanation of Provisions for a more detailed discussion of this definition.

II. Section 1.30D-2 Definitions

As noted in part II.C of the Background section, the April 2023 proposed regulations provided, in relevant part, definitions that apply for purposes of section 30D and the section 30D regulations. These proposed regulations would modify proposed §1.30D-2 by adding paragraph (j), which proposes a definition for seller report. Sections 5 and 6 of Revenue Procedure 2022-42 provided initial procedures for sellers of vehicles to provide seller reports to the IRS.

Proposed §1.30D-2(j) would define a “seller report” as the report described

in section 30D(d)(1)(H) (which section 25E(c)(1)(D)(i) cross references as part of the definition of a previously-owned clean vehicle) that is provided by the seller of a vehicle to the taxpayer and the IRS. The seller report must be provided to the IRS electronically, and the additional time and manner procedures for providing the seller report, as well as the information that must be included in the seller report, is contained in Revenue Procedure 2023-33, which will supersede relevant portions of Revenue Procedure 2022-42.

III. Special Rules that Apply for Purposes of Section 25E and Section 30D

A. In general

As noted in section II.C of the Background section of this preamble, the April 2023 proposed regulations provided guidance regarding the special rules under section 30D(f). See proposed §1.30D-4 of the April 2023 proposed regulations. These proposed regulations add provisions to those special rules that are relevant to recapture of the section 25E credit and the section 30D credit. These proposed regulations also add special rules relevant to section 25E. These proposed regulations are accompanied by Revenue Procedure 2023-33.

B. No double benefit rule

Proposed §1.25E-2(b)(1) would provide that for purposes of sections 25E(e) and 30D(f)(2), the amount of any deduction or other credit allowable under chapter 1 of the Code for a vehicle for which a section 25E credit is allowable must be reduced by the amount of the section 25E credit allowed for such vehicle. Proposed §1.25E-2(b)(2) would provide rules for the interaction of sections 30D and section 25E and provide that a section 30D credit that has been allowed with respect to a vehicle in a taxable year before the year in which a section 25E credit is allowable for that vehicle does not reduce the amount allowable under section 25E. Accordingly, a taxpayer who otherwise satisfies the requirements of section 25E would be eligible to claim the section 25E credit for a vehicle for which another taxpayer previously claimed the section 30D credit.

C. Recapture of the section 25E credit or the section 30D credit

Section 25E(e) provides that, for purposes of section 25E, rules similar to the rules of section 30D(f) apply. Section 30D(f)(5) instructs the Secretary to provide regulations for recapturing the benefit of any section 30D credit with respect to any property that ceases to be eligible for the section 30D credit. Thus, proposed §§1.25E-2(c) and 1.30D-4(d) would provide corresponding rules under section 30D(f)(5) for cancelled sales, returns, and resales of the vehicle. Because the rules proposed under each section generally are the same, with the exception of references to the clean vehicle credit applicable to the section (that is, the section 25E credit under proposed §1.25E-2(c) and the section 30D credit under proposed §1.30D-4(d)), the discussion in section III.D.1 through III.D.3 of this Explanation of Provisions, unless otherwise noted, refers to a “clean vehicle credit” to denote the credit under section 25E and section 30D.

1. Cancelled Sale

Proposed §§1.25E-2(c)(1)(i) and 1.30D-4(d)(1)(i) would provide the Federal income tax consequences that apply if the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service (that is, before the taxpayer takes possession of the vehicle). Specifically, in the case of a cancelled sale, the taxpayer may not claim a clean vehicle credit with respect to the vehicle. The vehicle will still be eligible for a clean vehicle credit upon a subsequent qualifying sale to another taxpayer because the vehicle was not placed in service as part of the prior cancelled sale. Additionally, the seller report (as defined in proposed §§1.25E-1(b)(11) and 1.30D-2(j) and described in part II of this Explanation of Provisions), if already submitted, must be rescinded by the seller pursuant to the procedures in the procedural guidance published in Revenue Procedure 2023-33. Finally, because the taxpayer is not eligible for the credit, no vehicle transfer election is available under the clean vehicle credit transfer rules described in section IV of this Explanation of Provisions.

2. Vehicle Returns

Proposed §§1.25E-2(c)(1)(ii) and 1.30D-4(d)(1)(ii) would provide the Federal income tax consequences that apply if the taxpayer returns the vehicle to the seller within 30 days of placing the vehicle in service. Specifically, in the case of such return, the taxpayer cannot claim a clean vehicle credit with respect to the vehicle. The Treasury Department and the IRS understand that vehicle retailers may have return policies that range from several days up to 30 days, so the proposed rules regarding returns within 30 days reflect industry practice.

In the case of a return within 30 days of what was a new clean vehicle, the vehicle, once returned, already was placed in service by the taxpayer and therefore is not available for original use by another taxpayer. Because section 30D(d)(1)(A) requires that original use of a new clean vehicle commence with the taxpayer, for purposes of section 30D, the returned vehicle is not eligible for the section 30D credit upon a subsequent sale. In the case of a return of a previously-owned clean vehicle, the vehicle, once returned, is not eligible for the section 25E credit upon a subsequent sale if the vehicle history reflects that the prior sale and return was a qualified sale per section 25E(c)(2)(C). However, if the vehicle history does not reflect the prior sale and return, the vehicle remains eligible for the section 25E credit under the first transfer rule described in proposed §1.25E-1(b)(8)(ii). The seller report, in the case of a return, must be updated by the seller to reflect the return pursuant to the procedures published in Revenue Procedure 2023-33. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election is nullified, and any advance payment made pursuant to the clean vehicle transfer rules will be recaptured from the eligible entity as an excessive payment.

See section IV.E.1 of this Explanation of Provisions for a discussion of the excessive payment rules described in the preceding paragraph.

3. Resales

Proposed §§1.25E-2(c)(1)(iii) and 1.30D-4(d)(1)(iii) would treat the taxpayer as having purchased the vehicle with an

intent to resell such vehicle if the resale occurs within 30 days of the taxpayer placing the vehicle in service. Section 30D(d)(1)(B) provides that a new clean vehicle must be acquired for use or lease by the taxpayer and not for resale, and section 25E(c)(3)(B) defines a qualified buyer as purchasing the vehicle for use and not for resale. The Treasury Department and the IRS propose that a resale within 30 days is a sufficiently short period of time to presume that the purchase was done with the intent to resell. As a result, in such a case the taxpayer who purchased the new clean vehicle and resold it within 30 days may not claim a clean vehicle credit with respect to the vehicle.

In the case of a resale by the taxpayer within 30 days of what was a new clean vehicle, the vehicle, once placed in service for use by the taxpayer, is not considered available for original use by another taxpayer for purposes of section 30D, so the vehicle is not eligible for the section 30D credit upon a subsequent sale. In the case of a resale by the taxpayer within 30 days of what was a previously-owned clean vehicle, the vehicle, once placed in service for use by the taxpayer, is not eligible for the section 25E credit upon a subsequent sale. In the case of a resale of such vehicle, however, the seller report is not required to be updated because the seller may not have knowledge of the subsequent resale. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election remains in effect and the value of any transferred credit pursuant to the clean vehicle transfer rules will be recaptured from the taxpayer (as opposed to the advance payment being collected from the eligible entity as an excessive payment, since the eligible entity is not a party to the subsequent resale).

See section IV.E.2 of this Explanation of Provisions for a discussion of the excessive payment rules of proposed §§1.25E-3(g)(2) and 1.30D-5(f)(2) described in the preceding paragraph.

4. Other Returns or Resales

Proposed §§1.25E-2(c)(1)(iv) and 1.30D-4(d)(iv) would provide a rule for returns or resales not described in section III.D.2 and 3 of this Explanation of Provisions (that is, returns or resales occurring more than 30 days after the date on which the taxpayer places the vehicle in

service). Generally, taxpayers returning or reselling a clean vehicle more than 30 days after the date the taxpayer places in service will remain eligible for the section 30D or section 25E credit for the purchase of such vehicle. The proposed regulations would provide that, in the case of what was a new clean vehicle before the return or resale, the vehicle, once returned or resold, is not available for original use by another taxpayer and, therefore, is not eligible for a section 30D credit. Similarly, in the case of what was a previously-owned clean vehicle before the return or resale, the vehicle, once returned or resold, generally is not eligible for the section 25E credit upon a subsequent sale pursuant to the first transfer rule described in proposed §1.25E-1(b)(8)(ii). In the case of return occurring more than 30 days after the date on which the taxpayer places the vehicle in service, the seller report is not required to be updated because the taxpayer generally will be eligible for the clean vehicle credit in this circumstance. In addition, in the case of a resale of such vehicle, the seller report is not required to be updated because the seller would not have knowledge of the subsequent resale. Finally, if the taxpayer made an election to transfer the clean vehicle credit, that vehicle transfer election remains in effect and the value of any transferred credit pursuant to the clean vehicle transfer rules generally is not subject to recapture or excessive payment.

Although the proposed regulations would not provide an automatic clean vehicle credit recapture rule for returns or resales more than 30 days after a return or resale, the IRS may determine upon facts and circumstances that a clean vehicle was purchased with the intent to return or resell and may disallow the clean vehicle credit in such cases.

The Treasury Department and the IRS request comments as to whether 30 days is the appropriate length of time for the return rule in proposed §§1.25E-2(c)(1)(ii) and 1.30D-4(d)(1)(ii) and the resale rule in proposed §§1.25E-2(c)(1)(iii) and 1.30D-4(d)(1)(iii).

D. Branded title rule

Proposed §1.25E-2(d) would provide that a title to a previously-owned clean vehicle indicating that such vehicle has

been damaged or is otherwise a branded title does not impact the vehicle's eligibility for a section 25E credit.

E. Seller registration

In general, to be eligible for the section 25E credit and the section 30D credit, a clean vehicle must be accompanied by a seller report. See sections 30D(d)(1)(H) and 25E(c)(1)(D)(i). Proposed §§1.25E-2(e) and 1.30D-4(g) would provide that the seller must register with the IRS in the manner set forth in Revenue Procedure 2023-33 for purposes of filing seller reports.

F. Requirement to file a complete income tax return

As discussed in the April 2023 proposed regulations and in these regulations, a taxpayer will continue to use Form 8936, now titled *Clean Vehicle Credits*, to claim the section 25E or 30D credit, regardless of whether the taxpayer transfers the credit to the dealer. The IRS cannot properly monitor claims of these credits if taxpayers do not include a completed Form 8936 with their individual income tax returns. Section 6213(g)(2)(D) defines a “mathematical or clerical error” for purposes of math error authority, to include an omission of information which is required to be supplied on the return to substantiate an entry on the return. To ensure that the IRS can appropriately monitor these credits, proposed §§1.25E-2(f) and 1.30D-4(h) would clarify that taxpayers must file an income tax return for the taxable year in which the clean vehicle is placed in service to be entitled to the credit under section 25E or 30D. For this purpose, an income tax return is defined as a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor form, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

IV. Transfer Rules for the Section 25E Credit and the Section 30D Credit

Section 30D(g), as noted in more detail in section I.A of the Background section of this

preamble, generally establishes a set of rules under which a taxpayer may transfer a section 30D credit to certain dealers, referred to as eligible entities, in which case the eligible entity (and not the taxpayer) is allowed the section 30D credit and in exchange the eligible entity must pay the taxpayer an amount equal to the transferred section 30D credit (with such payment being made either in cash or in the form of a partial payment or down payment for the purchase of the vehicle). Section 25E(f) provides that, for purposes of section 25E, rules similar to the rules of section 30D(g) apply.

The proposed regulations described in this section IV of the Explanation of Provisions are designed in part to ensure program integrity. Advance payment of the section 30D and section 25E credits poses unique compliance challenges, since such advance payments are not subject to the same tax administration procedures that apply to claiming a credit via return filing. Furthermore, participation in the credit transfer and advance payment program is optional. The transfer of the section 30D and 25E credits is elective on the part of the taxpayer, and the eligible entity can decide whether to offer to the taxpayer the ability to transfer such credits (thereby participating in the advance payment program). Taxpayers instead may choose to wait and claim a section 30D or section 25E credit on the taxpayer's return. Section 30D(g)(1) provides that a taxpayer election to transfer the 30D credit is subject to the regulations or other guidance that the Secretary determines necessary. Section 30D(g)(7) instructs the Secretary to establish a program for making advance payments to eligible entities – that is, payments made by the IRS to the eligible entity before the eligible entity files its Federal income tax return for the relevant taxable year. Taken together, these provisions provide authority for the Secretary to establish the parameters and conditions of the transfer election and the accompanying advance payment program for those taxpayers and eligible entities that choose to participate, in furtherance of sound tax administration.

Proposed §§1.25E-3 and 1.30D-5 would provide transfer rules under these provisions (section 30D(g) and section 25E(f) by cross reference to section 30D(g)), including by establishing

an advance payment program for such transfers. Because the rules proposed under each section are the same, with the exception of references to the clean vehicle credit applicable to the section (that is, the section 25E credit under proposed §1.25E-3 and the section 30D credit under proposed §1.30D-5), the discussion in section IV of this Explanation of Provisions, unless otherwise noted, refers to a “clean vehicle credit” to denote the credit under section 25E and section 30D.

The rules below do not specifically address the requirements, under section 30D(g)(2)(B)(ii) and (D), relating to the disclosure by the dealer of other incentives and the requirement that the dealer ensures that the availability or use of such other incentives do not limit the ability of a taxpayer to make a vehicle transfer election, and such election does not limit the value or use of such incentives. The Treasury Department and the IRS request comments as what guidance, if any, should be given here.

A. Definitions that apply for purposes of the transfer rules

Proposed §§1.25E-3(b) and 1.30D-5(a) would provide definitions that apply for purposes of the transfers of a clean vehicle credit. The definitions described in this section IV.A of the Explanation of Provisions apply to both proposed §1.25E-3(b) and proposed §1.30D-5(a).

1. Advance Payment Program

Proposed regulations 1.25E-3(b)(1) and 1.30D-5(a)(1) would define “advance payment program” as the program described in section 30D(g)(7) (and section 25E(f) by cross reference to section 30D(g)) and these proposed regulations under which an eligible entity may receive an advance payment from the Treasury Department in the case of a vehicle transfer election made by an electing taxpayer. The advance payment program represents the exclusive means by which an eligible entity may receive a transferred clean vehicle credit.

2. Dealer

Dealer for purposes of the transfer rules in proposed §§1.25E-3(b)(2) and

1.30D-(a)(2) has the same meaning as that in proposed §1.25E-1(b)(1) and described in section I.C.1 of this Explanation of Provisions.

3. Dealer Tax Compliance

Dealer tax compliance means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax, and the dealer has paid all Federal tax, penalties, and interest due of the dealer at the time of sale. In the case of an installment agreement, the proposed regulations clarify that a dealer is in dealer tax compliance if the dealer is current on its obligations under that installment agreement. See proposed §§1.25E-3(b)(2) and 1.30D-5(a)(3).

4. Electing Taxpayer

Electing taxpayer means the individual that purchases and places in service a clean vehicle and that elects to transfer a clean vehicle credit associated with that vehicle that would otherwise be allowable to that individual. To be an electing taxpayer, the individual must make certain attestations regarding anticipated eligibility for the credit to a registered dealer as provided in Revenue Procedure 2023-33. See proposed §§1.25E-3(b)(3) and 1.30D-5(a)(4). For example, the electing taxpayer must make an attestation regarding satisfaction of the modified adjusted gross income limitations for the clean vehicle credit. In addition, for purposes of section 30D, the electing taxpayer must attest to the registered dealer that it plans to use the vehicle predominantly for personal use. *Id.* Because the election to transfer a credit under section 30D(g) is limited to the credit allowable under subsection 30D, a taxpayer may not elect to transfer a general business credit for a new clean vehicle allowable under section 38 instead of section 30D, pursuant to section 30D(c)(1). As described in proposed §1.30D-1(b)(1) of the April 2023 proposed regulations, a depreciable vehicle the use of which is 50 percent or more business use in the taxable year the vehicle is placed in service is not apportioned between section 38 and section 30D, but instead is creditable entirely under section 38 as a general

business credit. Thus, the use of a new clean vehicle must be predominantly personal for a taxpayer to be able to make the election to transfer the credit under section 30D(g). These attestations will help prevent a transfer of the credit for which the taxpayer is ineligible, and therefore will reduce instances of recapture.

5. Eligible Entity

Eligible entity means a registered dealer that meets certain requirements and, by reason of meeting those requirements, is eligible to receive advance payments from the IRS under the advance payment program. See proposed §§1.25E-3(b)(4) and 1.30D-5(a)(5). The requirements the eligible entity must meet are described in section IV.D of this Explanation of Provisions.

6. Registered Dealer

Registered dealer refers to a dealer that has completed the registration described in proposed §§1.25E-3(c) and 1.30D-5(b) and section IV.B of this Explanation of Provisions. See proposed §§1.25E-3(b)(5) and 1.30D-5(a)(6).

7. Time of Sale

Time of sale means the date the clean vehicle is placed in service. The date the clean vehicle is placed in service is the date the taxpayer takes possession of the vehicle. See proposed §§1.25E-3(b)(6) and 1.30D-5(a)(7); see also proposed §1.30D-2(e) of the April 2023 proposed regulations for the definition of placed in service.

B. Dealer registration and taxpayer election

1. Dealer Registration

Proposed §§1.25E-3(c)(1) and 1.30D-5(b)(1) would provide that, before being eligible to participate in the advance payment program and receive transfers of clean vehicle credits from an electing taxpayer, a dealer must register (thereby becoming a registered dealer). The dealer will register in the manner set forth in Revenue Procedure 2023-33.

Proposed §§1.25E-3(c)(2) and 1.30D-5(b)(2) would provide rules regarding dealer tax compliance. Specifically, if the dealer is not in dealer tax compliance for any of the taxable periods during the most recent five taxable years, the dealer may register to become a registered dealer, but the dealer cannot receive advance payments under the advance payment program until the dealer tax compliance issue is resolved. In such case, the dealer, while registered, is not an eligible entity until it comes into dealer tax compliance. Relevant procedural guidance regarding dealer tax compliance will be published in the Internal Revenue Bulletin.

Pursuant to section 30D(g)(1) and (g)(7), participation in the advance payment program is elective and is subject to the requirements and conditions that the Secretary determines necessary. Requiring registration of a dealer before it may participate in the advance payment program ensures that only entities that are valid, licensed vehicle dealers are eligible to receive advance payments of the transferred credits. In addition, requiring dealer tax compliance ensures that entities receiving advance payments are current on their Federal tax obligations. Taken together, these requirements help ensure that only compliant, registered dealers receive the benefit of the elective advance payment program by preventing fraud and ensuring sound tax administration.

2. Vehicle Transfer Election

For clean vehicles placed in service after December 31, 2023, the proposed regulations would provide that an electing taxpayer may make an election to transfer a clean vehicle credit otherwise allowable to the electing taxpayer to an eligible entity pursuant to a vehicle transfer election. See proposed §§1.25E-3(d) and 1.30D-5(c). The vehicle transfer election is made by the electing taxpayer no later than at the time of sale pursuant to Revenue Procedure 2023-33, and, once made, the vehicle transfer election is irrevocable. To make a valid vehicle transfer election, the electing taxpayer must transfer the entire amount of the clean vehicle credit otherwise allowable to it and, in exchange for the transferred clean vehicle credit, the eligible entity must pay the

electing taxpayer an amount equal to the clean vehicle credit included in the vehicle transfer election or treat the credit amount as a down payment or partial payment.

C. Federal income tax consequences of the vehicle transfer election

1. Treatment of Electing Taxpayer

Proposed §§1.25E-3(e)(1) and 1.30D-5(d)(1) would provide the Federal income tax treatment of a vehicle transfer election as to an electing taxpayer. Specifically, the proposed regulations provide that the amount of the clean vehicle credit an electing taxpayer may transfer as part of a vehicle transfer election can exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess amount, if any, generally is not subject to recapture unless recapture pursuant to section 30D(f)(5) or (g)(10) applies. In addition, the payment made (whether in cash or in the form of a partial payment or down payment for the purchase of such vehicle) by the eligible entity to the electing taxpayer is not includible in the electing taxpayer's gross income for the taxable year. Finally, to ensure appropriate application of the basis reduction rule in section 30D(f)(1) (and section 25E(e) by cross reference to section 30D(f)(1)), the proposed regulations would provide that the payment described in the preceding sentence is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the vehicle.

2. Treatment of Eligible Entity

Proposed §§1.25E-3(e)(2) and 1.30D-5(d)(2) would provide the Federal income tax treatment of a vehicle transfer election as to an eligible entity. Specifically, the eligible entity may receive as an advance payment from the Treasury Department the amount of the clean vehicle credit transferred to the eligible entity as part of a vehicle transfer election, which is not includible in the eligible entity's gross income for the taxable year in which such payment is received or accrued, as appropriate, and such payment may exceed the eligible entity's regular tax liability (as

defined in section 26(b)(1)) for such taxable year and generally is not subject to recapture unless the excessive payment rules apply. The eligible entity may not deduct the payment made to the electing taxpayer, and, consistent with the treatment as to the electing taxpayer described in section IV.C.1 of this Explanation of Provisions, the electing taxpayer is treated as paying the eligible entity the amount of the transferred clean vehicle credit as part of the purchase price of the clean vehicle. The amount of this payment by the electing taxpayer is treated as part of the amount realized by the eligible entity under section 1001 from the sale of the clean vehicle.

The proposed regulations would provide special rules in the case of an eligible entity that is a partnership or an S corporation. See proposed §§1.25E-3(e)(2)(vi) and 1.30D-5(d)(2)(vi). Because the electing taxpayer is treated as paying the eligible entity the amount of the transferred clean vehicle credit as part of the purchase price of the clean vehicle and the amount of this payment is treated as part of the amount realized by the eligible entity under section 1001 from the sale of the clean vehicle, the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code. These rules would ensure proper basis and capital accounting reporting for advance payments received by partnerships and S corporations and parity in Federal tax treatment regardless of the form through which the eligible entity conducts its business.

3. Other Rules

Proposed §§1.25E-3(e)(3) and 1.30D-5(d)(3) would provide that the Federal income tax treatment of the payments associated with a vehicle transfer election are the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for the purchase of the clean vehicle. Additionally, proposed §§1.25E-3(e)(4) and 1.30D-5(d)(4) would describe the additional rules that apply by reason of a vehicle transfer election (that is, section 30D(f)(1) and (f)(2), section 30D(f)(6), and section 30D(f)(9), including with respect to the section 25E proposed regulations by reason of the

cross reference to section 30D(g) in section 25E(f)).

Proposed §1.30D-5(d)(5) would provide examples demonstrating the Federal income tax treatment of a vehicle transfer election.

D. Advance payment program

As noted earlier in this section, the advance payment program allows an eligible entity to receive payments from the IRS corresponding to the amount of the clean vehicle credit for which a vehicle transfer election was made before the eligible entity files its Federal income tax return for the taxable year with respect to which the vehicle transfer election relates. See proposed §§1.25E-3(f) and 1.30D-5(e). To qualify for the advance payment program, a registered dealer (that is, a dealer that meets the registration requirements described in section IV.B of this Explanation of Provisions), must meet additional requirements to be an eligible entity. Those requirements are that the registered dealer must submit additional registration information and be in dealer tax compliance, the registered dealer must retain information related to the vehicle transfer election for the period specified in the proposed regulations, and the registered dealer must meet any other requirements provided in procedural guidance published in the Internal Revenue Bulletin.

The proposed regulations would also refer to suspension and revocation procedures identified in Revenue Procedure 2023-33. See proposed §§1.25E-3(f)(3) and (4) and 1.30D-5(e)(3) and (4). Section 7803(e)(3) provides it is the function of the IRS Independent Office of Appeals (Appeals) to resolve Federal tax controversies without litigation. Decisions made by the IRS relating to the suspension or revocation of a dealer's registration are not Federal tax controversies within the meaning of the section 7803(e)(3) because registration is too attenuated and separate from any tax liability of the registering dealer. These registration-related decisions would have no direct effect on the amount of a dealer's tax liability and likely would only affect the source of the dealer's income. For example, a dealer's ability to benefit

from sections 30D(g) or 25E(f) is predicated on registration, a buyer purchasing the eligible clean vehicle, and a buyer making an election to transfer the credit under sections 30D(g) or 25E(f). Only upon those three events would the registration affect the dealer's tax liability. Accordingly, proposed §§ 1.25E-3(f)(3) and (4) and 1.30D-5(e)(3) and (4) would provide that a dealer could not administratively appeal the IRS's decisions relating to the suspension or revocation of a dealer's registration unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

E. Increases in tax

1. Recapture from Taxpayer

As noted in section I of the Background section of this preamble, section 30D(g)(10) provides that, in the case of any taxpayer who has made an election described in section 30D(g)(1) with respect to a new clean vehicle and received a payment described in section 30D(g)(2)(C) from an eligible entity, if the credit under section 30D would otherwise (but for section 30D(g)) not be allowable to such taxpayer pursuant to the application of section 30D(f)(10) (relating to the modified adjusted gross income limitation), the tax imposed on such taxpayer under chapter 1 for the taxable year in which such vehicle was placed in service will be increased by the amount of the payment received by such taxpayer. Because of the section 25E(f) cross reference to section 30D(g), similar rules will apply for previously-owned clean vehicles.

Proposed §§1.25E-3(g)(1) and 1.30D-5(f)(1) would provide that, in the case of a clean vehicle credit that would otherwise not be allowable to a taxpayer that made a vehicle transfer election because the taxpayer exceeds the limitation based on modified adjusted gross income, the income tax imposed on the taxpayer under chapter 1 for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer pursuant to the vehicle transfer election. The taxpayer in such a

case must reconcile the amounts on its tax return for the taxable year.

2. Excessive Payment as to Eligible Entity

As noted in section I of the Background section of this preamble, section 30D(g)(7)(B) (and section 25E(f) by cross reference to section 30D(g)) provides that rules similar to the rules of section 6417(d)(6) apply for purposes of the advance payment program. Proposed §§1.25E-3(g)(2) and 1.30D-5(f)(2) would provide that, in the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity by chapter 1, regardless of whether such entity would otherwise be subject to chapter 1 tax, for the taxable year in which such determination is made will be increased by the sum of the amount of the excessive payment, plus an amount equal to 20 percent of such excessive payment. The latter amount, however, will not apply if the eligible entity demonstrates to the IRS that the excessive payment was due to reasonable cause, which is presumed to be the case for a clean vehicle returned within 30 days of placing such vehicle in service. See proposed §§1.25E-3(g)(2)(ii) and 1.30D-5(f)(2)(ii).

The proposed regulations would provide that an excessive payment means, with respect to an advance payment to an eligible entity pursuant to a vehicle transfer election made by an electing taxpayer, an advance payment made to a registered dealer that fails to meet the requirements to be an eligible entity, or to an eligible entity with respect to a clean vehicle to the extent the payment exceeds the amount of the clean vehicle credit that would be otherwise allowable to the electing taxpayer with respect to the vehicle. See proposed §§1.25E-3(g)(2)(iii) and 1.30D-5(f)(2)(iii). However, any excess attributable to a taxpayer exceeding the limitation based on modified adjusted gross income is not treated as an excessive payment to an eligible entity.

F. Requirement to file return

Proposed §§1.25E-3(h) and 1.30D-5(g) would provide that an electing taxpayer must file an income tax return for the

taxable year in which the vehicle transfer election is made that reports such election. Specifically, the electing taxpayer must file a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor form, and any other additional forms, schedules, or statements prescribed by the Commissioner for purposes of making a return to report tax under chapter 1. The electing taxpayer must include the VIN of the clean vehicle on the return of tax for the taxable year in which the vehicle transfer election is made, as provided for in forms and instructions.

G. Two vehicle transfer elections per year.

Proposed §§1.25E-3(i) and 1.30D-5(h) would provide that a taxpayer may make no more than two transfer elections per taxable year, consisting of elections either for two section 30D credits or for one section 30D credit and one section 25E credit. In the case of a joint return, each spouse may make two transfer elections per taxable year, for a maximum of four vehicle transfer elections in a taxable year. This proposed rule is intended to ensure program integrity by limiting transfer elections to vehicle sales that appear to be for legitimate personal or individual use. The section 30D credit may only be transferred for clean vehicles that are for predominantly personal use, and a taxpayer transferring the section 25E credit must be an individual. Moreover, a qualified buyer of a previously-owned clean vehicle for the section 25E credit must not have been allowed a prior section 25E credit for a sale in the prior three years. The Treasury Department and the IRS believe that it is unlikely that an individual who meets the modified adjusted gross income limitations would purchase more than two clean vehicles in a taxable year for legitimate personal or individual use. Accordingly, in light of the unique compliance challenges posed by advance payments of the section 30D and section 25E credits and pursuant to the broad authority conferred by section 30D(g)(1) and section 25E(f), the proposed regulations would limit taxpayers to two vehicle transfer elections in a taxable year.

A. Omission of a correct vehicle identification number

The IRA added three new definitions to the exclusive list of “mathematical or clerical errors” in section 6213(g)(2). These new definitions are set out in sections 6213(g)(2)(T), (U), and (V). Section 6213(g)(2)(T) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 30D(f)(9) (relating to credit for new clean vehicles) to be included on a return; section 6213(g)(2)(U) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 25E(d) (relating to credit for previously-owned clean vehicles) to be included on a return; and section 6213(g)(2)(V) provides that the term “mathematical or clerical error” means an omission of a correct VIN required under section 45W(e) (relating to commercial clean vehicle credit) to be included on a return.

The flush language added by Congress in 1998 to clarify the meaning of a correct TIN does not provide the clarification that is necessary to determine the meaning of “an omission of a correct vehicle identification number” under sections 6213(g)(2)(T) through (V). Accordingly, proposed §301.6213-2 would provide rules for determining when the IRS is authorized to use math error authority to make a summary assessment when there has been an “omission of a correct vehicle identification number” on a taxpayer’s return when claiming or electing to transfer the credits under sections 30D, 25E and 45W.

Proposed §301.6213-2 would describe when taxpayers will be treated as having omitted a correct VIN required to be included on a taxpayer’s return under section 30D, section 25E, and section 45W. Under proposed §301.6213-2(b), a taxpayer would be treated as having omitted a correct VIN (1) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is not included on the tax return; (2) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is included on the tax return but is not a VIN for an eligible vehicle under section 30D(d)(1), 25E(c)(1), or

45W(c); (3) when the VIN required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is included on the tax return but the taxpayer claims the credit for a year in which the vehicle is not eligible for the credit; (4) when the VIN required to be reported under section 30D(f)(9) is included on the tax return but differs from the VIN reported to the Secretary under section 30D(d)(1)(H) for the taxpayer who was issued the report; and (5) when the VIN required to be reported under section 25E(d) is included on the tax return but differs from the VIN reported to the Secretary under section 25E(c)(1)(D)(i) for the taxpayer who was issued the report.

B. Failure to include the vehicle identification number on the tax return

A taxpayer claiming a credit with respect to a new clean vehicle under section 30D, a previously-owned clean vehicle under section 25E(a), or a commercial clean vehicle under section 45W(a), is required under sections 30D(f)(9), 25E(d), or 45W(e), whichever is applicable, to report the VIN of such vehicle on the taxpayer’s return. Under proposed §301.6213-2, a taxpayer would be treated as having omitted a correct VIN required under sections 30D(f)(9), 25E(d), and 45W(e), if the VIN is missing from the taxpayer’s return or the number reported on the return is an invalid VIN. A VIN is a unique identifying code for a specific automobile. Modern VINs comprise 17 characters (digits and capital letters) that act as a unique identifier for the vehicle and displays the car’s unique features, specifications, and manufacturer. An invalid VIN is a number that does not match any existing VIN reported by a qualified manufacturer. Under the proposed regulation, if the IRS determines that a taxpayer has failed to include the VIN with the tax return for the taxable year because the VIN is missing or invalid, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under either section 6213(g)(2)(T), (U), or (V), whichever is applicable.

C. Vehicle identification number included on the return is for ineligible vehicle

The credit under sections 30D, 25E, or 45W is available for vehicles that

qualify as a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c). Under proposed §301.6213-2, a taxpayer would be treated as having omitted a correct VIN required under sections 30D(f)(9), 25E(d), or 45W(e), if the VIN included on the taxpayer’s return is not that of a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c). Under the proposed regulation, if the IRS determines that a taxpayer reported a VIN but the VIN is not for a vehicle described in sections 30D(d)(1), 25E(c)(1), or 45W(c), the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T), (U), or (V), whichever is applicable.

D. Vehicle identification number is included on the return but is claimed for a year in which the vehicle is not eligible for the credit

The credit under section 30D is available for each new clean vehicle placed in service by the taxpayer during the taxable year if the new clean vehicle meets the critical mineral and battery component requirements applicable for that year, as defined in sections 30D(e)(1) and (2). Beginning in 2023, the percentage of the value of the applicable critical minerals contained in the vehicle’s battery, as well as the percentage of the value of the components contained in the vehicle’s battery that were manufactured or assembled in North America, must equal or exceed the applicable percentages identified in sections 30D(e)(1) or (2) for the relevant year. If the vehicle does not meet at least one of the applicable percentage requirements for critical minerals and battery components for the specified year in which it is placed in service, the vehicle is ineligible for the section 30D credit for the claimed year. Therefore, a VIN reported on a taxpayer’s return that does not meet the section 30D(e)(1) or (2) requirements for the applicable year cannot be a correct VIN under section 30D.

The credits under sections 30D, 25E, and 45W are available for vehicles that

qualify as a new clean vehicle under section 30D(d)(1), a previously-owned clean vehicle under section 25E(c)(1), or a qualified commercial clean vehicle under section 45W(c) for the taxable year the vehicle is placed in service. If a taxpayer claims the credit under sections 30D, 25E, or 45W, whichever is applicable, for a year other than the year that the vehicle was placed in service, the vehicle is ineligible for the credit for the claimed year. Therefore, a VIN reported on a taxpayer's return for a vehicle that was not placed in service for the year the taxpayer claims the credit cannot be a correct VIN under sections 30D, 25E or 45W. Under proposed §301.6213-2(b)(3), a taxpayer would be treated as having omitted a correct VIN required under section 30D(f)(9) if the VIN included on the tax return is for a vehicle that is not eligible for such credit under section 30D(e)(1) or (2) in the taxable year that the taxpayer claims the credit, if the taxpayer claims the credit under section 30D, 25E, or 45W for a year other than the year that the vehicle was placed in service, or if the taxpayer claims a credit under section 25E for a previously-owned clean vehicle with a model year that is not at least two model years earlier than the calendar year in which such vehicle is acquired. Under the proposed regulation, if the IRS determines the taxpayer omitted a correct VIN required under section 30D(f)(9) because the VIN included on the tax return is for a vehicle that is not eligible for such credit under section 30D(e)(1) or (2) in the taxable year that the taxpayer claims the credit, or if the taxpayer claims the credit under section 30D, 25E, or 45W for a year other than the year that the vehicle was placed in service, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T), (U), or (V), whichever is applicable.

E. Vehicle identification number is included on the return but does not match the vehicle identification number included in the section 30D(d)(1)(H) seller report for a particular taxpayer

Section 30D(d)(1)(H) requires the person who sells a new clean vehicle to the taxpayer to furnish a report to the taxpayer and to the Secretary that contains (i) the

name and TIN of the taxpayer, (ii) the VIN of the vehicle, unless, in accordance with any applicable rules promulgated by the Secretary of Transportation, the vehicle is not assigned such a number, (iii) the battery capacity of the vehicle, (iv) verification that original use of the vehicle commences with the taxpayer, (v) the maximum credit under section 30D allowable to the taxpayer with respect to the vehicle, and (vi) in the case of a taxpayer who makes a vehicle transfer election, any amount described in section 30D(g)(2)(C) that was paid to such taxpayer. These requirements for the seller report reflect that it is a fundamental reporting requirement that the VIN for each vehicle eligible for the credit be linked to a particular taxpayer's TIN. A VIN reported on a taxpayer's return by anyone other than the reported taxpayer's TIN cannot, therefore, be a correct VIN for the taxpayer claiming the section 30D credit.

To reflect this TIN/VIN linkage and ensure that only the taxpayer who purchased the vehicle is able to claim the VIN for the vehicle eligible for the section 30D credit, proposed §301.6213-2(b)(4) would provide that a taxpayer is treated as having omitted a correct VIN on a tax return as required under section 30D(f)(9) if the VIN on the tax return does not match the VIN included in the seller report under section 30D(d)(1)(H) for the taxpayer claiming the credit. Under the proposed regulation, if the IRS determines that a taxpayer reported a VIN but the VIN claimed on the taxpayer's return is not for a vehicle that was reported to the IRS and the taxpayer on the section 30D(d)(1)(H) report for that taxpayer, the IRS is authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(T).

F. Vehicle identification number is included on the return but does not match the vehicle identification number included in the section 25E(c)(1)(D)(i) seller report for a particular taxpayer

Section 25E(c)(1)(D)(i) requires the person who sells a previously-owned clean vehicle to the taxpayer to furnish a report to the taxpayer and to the Secretary that meets the requirements of section 30D(d)(1)(H) (except for clause (iv) thereof).

Just like the requirements for the seller report for a new clean vehicle, the requirements for the seller's previously-owned clean vehicle report reflect a fundamental linkage between the VIN for each vehicle eligible for the credit and a particular taxpayer's TIN. For the same reasons listed in section V.E of this Explanation of Provisions, a VIN reported on a taxpayer's return by anyone other than the reported taxpayer's TIN cannot, therefore, be a correct VIN for the taxpayer claiming the section 25E credit.

To reflect this TIN/VIN linkage and ensure that only the taxpayer who purchased the vehicle is able to claim the VIN for the vehicle eligible for the section 25E credit, proposed §301.6213-2(b)(5) would provide that a taxpayer is treated as having omitted a correct VIN on a tax return as required under section 25E(d) if the VIN on the tax return does not match the VIN included in the seller report under section 25E(c)(1)(D)(i) for a taxpayer claiming the credit. Under the proposed regulation, if the IRS determines that a taxpayer included a VIN on a tax return but the VIN claimed on the taxpayer's return is not for a vehicle that was reported to the IRS and the taxpayer under sections 25E(c)(1)(D)(i) for that taxpayer, the IRS would be authorized to make an assessment of the tax based on an omission of a correct VIN under section 6213(g)(2)(U).

VI. Severability

If any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Proposed Applicability Dates

Except as described in the following paragraph, these regulations are generally proposed to apply to new clean vehicles and previously-owned clean vehicles placed in service in taxable years beginning after October 10, 2023.

Proposed §§1.25E-3, 1.30D-5, and 301.6213-2 are proposed to apply to

taxable years beginning after December 31, 2023. The applicability date of proposed §§1.25E-3 and 1.30D-5 would align with the applicability date of the transfer provisions of the section 25E or section 30D credit, which apply to vehicles acquired or placed in service, respectively, after December 31, 2023. Proposed §301.6213-2 describes the exercise of math error authority with respect to omission of a correct VIN, which relates in part to seller reporting. Application of this proposed rule to taxable years beginning after December 31, 2023, would align with the commencement of the electronic submission of seller reporting to improve administration of the section 25E and section 30D credits.

Effect on Other Documents

This notice of proposed rulemaking modifies proposed §§1.30D-2 and 1.30D-4 of the April 2023 proposed regulations.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed §§1.25E-3 and 1.30D-5 regarding vehicle transfer elections will be reflected in the PRA Submissions associated with Revenue Procedure 2023-33. The IRS is seeking OMB approval and requesting a new OMB control number for Revenue Procedure 2023-33. These proposed regulations do not alter previously accounted for information collection requirements and do not create new collection requirements. OMB Control Number 1545-2137 covers Form 8936 and Form 8936-A regarding electric vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure

2022-42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the Secretary to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component certification requirements in section 30D(e)(1)(A) and (2)(A). In addition, Revenue Procedure 2022-42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022-42 are described in that document and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545-2137.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of a significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

A. Need For and Objectives of the Rule

The proposed regulations would provide the eligibility rules and key definitions

regarding the section 25E credit to allow taxpayers to know whether their purchase of a used vehicle is eligible for the section 25E credit. In addition, the proposed regulations would provide rules regarding the recapture authority under sections 30D(f)(5) and 25E(e), so that taxpayers and the IRS have clear rules regarding when a clean vehicle may cease being eligible property for purposes of the section 25E and section 30D credits. Further, the proposed regulations would provide rules regarding the meaning of the omission of a correct VIN for purposes of math error authority as described in section 6213(g) (2). Clear rules regarding the exercise of math error authority will provide for efficient and fair tax administration.

The proposed regulations would provide guidance for purposes of taxpayers electing to transfer vehicle credits under sections 25E(f) and 30D(g) to eligible entities and for eligible entities participating in the advance payment program with respect to those transferred credits. The proposed rules would provide rules regarding the process for taxpayers to elect to transfer the credit and for eligible entities to register and receive advance payments from the IRS and rules regarding the Federal income tax treatment of the vehicle transfer election, including recapture and excessive payments. The proposed rules regarding the vehicle transfer election ensure certainty regarding the consequences of the transfer election, decrease the risk of fraud, and expedite the process by which an eligible entity may receive an advance payment under section 25E(f) or 30D(g).

The proposed rules are expected to encourage taxpayers to increase the placing in service of new and previously-owned clean vehicles. Thus, the Treasury Department and the IRS intend and expect that the proposed rules will deliver benefits across the economy and environment that will beneficially impact various industries, including clean vehicle manufacturers and dealers.

B. Affected Small Entities

The Small Business Administration estimates in its 2023 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small

business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, these rules may affect a variety of different businesses across several different industries, but will primarily affect dealers of new and previously-owned clean vehicles who would like to be eligible entities to receive a transferred credit from the buyers of a clean vehicle. The Treasury Department and the IRS currently estimate the number of dealers of new clean vehicles to be approximately 16,000, and the number of dealers of previously-owned clean vehicles to be approximately 36,000.

Of the estimated 16,000 dealers of new clean vehicles, we estimate that 10,000 will have receipts in excess of \$25 million; 3,000 will have receipts between \$10-\$25 million; 1,000 will have receipts between \$5-10 million, and 2,000 will have receipts under \$5 million. Of the estimated 36,000 dealers of previously-owned clean vehicles, we estimate that 500 will have receipts in excess of \$25 million; 1,500 will have receipts between \$10-\$25 million; 2,000 will have receipts between \$5-10 million, and 32,000 will have receipts under \$5 million.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule and again when participation in the election to transfer credits under sections 25E(f) and 30D(g) commences.

1. Impact of the Rules

The recordkeeping and reporting requirements would increase for taxpayers who elect to transfer the section 25E or 30D credit to an eligible entity. In addition, the recordkeeping and reporting requirements would increase for dealers who seek to qualify as eligible entities and participate in the advance payment program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the PRA section of the

preamble. The Treasury Department and IRS estimate that, based on the total of 52,000 dealers of new (16,000) and previously-owned (36,000) clean vehicles, it will take approximately one hour to register as entities eligible to receive advance payments of credits under sections 25E and 30D, for a total of 52,000 hours total. The Treasury Department and IRS further estimate that there are approximately 950,000 taxpayers who will purchase new clean vehicles and 28,750 taxpayers who will purchase previously-owned clean vehicles who will elect to transfer their respective credits to the eligible entity, for a total of 978,750 elections annually. The Treasury Department and IRS estimate each election will take approximately 15 minutes to complete, for a total burden of approximately 244,688 hours per year.

2. Alternatives Considered

The Treasury Department and the IRS considered various alternatives in promulgating these proposed regulations. Significant alternatives considered include: (1) the sale price definition in proposed §1.25E-1(b)(9); (2) the first transfer rule described in proposed §1.25E-1(b)(8); (3) the recapture rules provided in proposed §§1.25E-2(c) and 1.30D-4(f), and (4) the dealer registration requirements provided in proposed §§1.25E-3(b) and 1.30D-5(b).

Regarding the sale price definition in proposed §1.25E-1(b)(9), the Treasury Department and the IRS considered the appropriate scope of the definition and how the definition of sale price should be consistent with or diverge from the definition of manufacturer's suggested retail price for purposes of section 30D(f)(11). The definition of manufacturer's suggested retail price in proposed §1.30D-2(c) of the April 2023 proposed regulations refers to a statutory definition in 15 U.S.C. 1232 that is used for purposes of vehicle labeling on the vehicle window sticker. That proposed definition includes optional accessories or items included by the manufacturer at the time of delivery to the dealer but excludes delivery charges to the dealer. For used vehicles, however, there are not similar vehicle labeling standards that provide a standard for defining sales price. In addition, in a used vehicle

sale the dealer and buyer may negotiate to characterize a portion of the sale price as a separately stated fee or charge (other than those required by law) to avoid the section 25E sales price cap of \$25,000. To prevent this type of recharacterization, proposed §1.25E-1(b)(9) defines sale price to mean the total sale price agreed upon by the buyer and the dealer, including any delivery charges. This definition specifically excludes separately-stated taxes and fees required by State or local law, since such taxes and fees are not subject to negotiation or recharacterization by the dealer and buyer.

The Treasury Department and the IRS considered various alternatives to the first transfer rule described in proposed §1.25E-1(b)(8). This rule is necessary to determine whether a sale of a previously-owned clean vehicle is a qualified sale pursuant to section 25E(c)(2). One of the requirements to be a qualified sale is that the sale be the first transfer to a qualified buyer since the enactment of section 25E other than to the person with whom the original use of the vehicle commenced. However, some of the characteristics of being a qualified buyer are unknowable to the dealer and the buyer in a subsequent sale, including that a qualified buyer be an individual, not be a dependent, and not have claimed the section 25E credit in the prior three years. As a result, if a previously-owned clean vehicle is transferred more than once after the date of enactment of section 25E, there is no way for the parties after the first transfer to know if the first transfer was to a qualified buyer. Because the IRS may have access to some information necessary to determine whether a first transfer was to a qualified buyer, the Treasury Department and the IRS considered alternatives to the first transfer rule such as a look-up tool regarding prior claims of the section 25E credit for a particular vehicle or information regarding prior vehicle purchasers. However, disclosure of this information raises significant confidentiality issues. Accordingly, the Treasury Department and the IRS have proposed the first transfer rule to provide certainty to buyers and dealers as to which transfer of a previously-owned clean vehicle is the first transfer and will qualify for the section 25E credit by relying on the vehicle history.

The Treasury Department and the IRS considered alternatives to the recapture rules provided in proposed §§1.25E-2(c) and 1.30D-4(f). Given the increased availability and benefits of the section 30D credit and the new section 25E credit when the credit can be transferred to an eligible entity and is not limited by the taxpayer's tax liability, the Treasury Department and the IRS determined it was necessary to provide rules regarding when the value of the clean vehicle credits can be recaptured. The Treasury Department and the IRS also considered the appropriate length of time within which a return or resale of a vehicle would make the taxpayer ineligible for the credit. Longer and shorter periods of time were considered. Based on industry standard return policies, including money back guarantees, the Treasury Department and the IRS determined that it was appropriate to deny the benefit of the credit if the credit was returned within 30 days. In addition, the Treasury Department and the IRS determined it was reasonable to assume an intent to resell the vehicle, making the purchase of the vehicle ineligible, if the vehicle was resold within 30 days.

Finally, with respect to the dealer registration requirements provided in proposed §§1.25E-3(b) and 1.30D-5(b), the Treasury Department and the IRS considered various processes by which a seller could become an eligible entity and participate in the advance payment program. The Treasury Department and the IRS considered a process that did not require submission of a significant amount of information prior to the dealer becoming an eligible entity, but such an approach could require more back-end compliance. To ensure efficient tax administration and reduce fraud, the Treasury Department and the IRS determined that an up-front, electronic registration process was necessary for the IRS to effectively review and validate eligible entity status. To ensure efficient tax administration and reduce fraud, the Treasury Department and the IRS determined that an up-front, electronic registration process was necessary for the IRS to effectively review and validate eligible entity status. In addition, the Treasury Department and the IRS determined that dealers must submit identity information and attestations regarding their participation in the advance payment program to ensure program integrity. Finally,

the Treasury Department and the IRS determined that dealer tax compliance was necessary to ensure that advance payments are being paid only to compliant dealers.

3. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed rule would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed rules would merely provide requirements, procedures, and definitions related to the clean vehicle transfer election programs for sections 25E and 30D. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless

the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VI. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the *Federal Register*.

Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of

Documents, U.S. Government Publishing Office, Washington, DC, 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order for §§1.25E-1 through 1.25E-3 and 1.30D-5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.25E-1 through 1.25E-3 also issued under 26 U.S.C. 25E.

* * * * *

Section 1.30D-5 also issued under 26 U.S.C. 30D.

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Par 2. Sections 1.25E-0 through 1.25E-3 are added to read as follows:

Sec.

* * * * *

1.25E-0 Table of contents.

1. 25E-1 Credit for previously-owned clean vehicles.

1. 25E-2 Special rules.

1. 25E-3 Transfer of credit.

* * * * *

§1.25E-0 Table of contents.

This section lists the captions contained in §§1.25E-1 through 1.25E-3.

§1.25E-1 Credit for previously-owned clean vehicles.

(a) In general.

(b) Definitions.

(1) Dealer.

(2) Incentive.

(3) Modified adjusted gross income.

(4) Placed in service.

(5) Previously-owned clean vehicle.

(6) Qualified buyer.

(7) Qualified manufacturer.

(8) Qualified sale.

(i) In general.

(ii) First transfer rule.

(9) Sale price.

(10) Section 25E regulations.

(11) Seller report.

(c) Limitation based on modified adjusted gross income.

(1) In general.

(2) Threshold amount.

(3) Special rule for change in filing status.

(d) Limitation on multiple owners.

(1) In general.

(2) Seller reporting.

(e) Examples.

(1) Example 1.

(2) Example 2.

(3) Example 3.

(4) Example 4.

(5) Example 5.

(6) Example 6.

(f) Severability.

(g) Applicability date.

§1.25E-2 Special rules.

(a) In general.

(b) No double benefit.

(1) In general.

(2) Interaction of section 30D and section 25E no double benefit rules.

(c) Recapture.

(1) In general.

(i) Cancelled sale.

(ii) Vehicle return.

(iii) Resale.

(iv) Other returns and resales.

(2) Recapture rules in the case of a vehicle transfer election.

(3) Example.

(d) Branded title.

(e) Seller registration.

(f) Requirement to file a complete income tax return.

(g) Severability.

(h) Applicability date.

§1.25E-3 Transfer of credit.

(a) In general.

(b) Definitions.

(1) Advance payment program.

(2) Dealer.

(3) Dealer tax non-compliance.

(4) Electing taxpayer.

(5) Eligible entity.

(6) Registered dealer.

(7) Time of sale.

(8) Vehicle transfer election.

(c) Dealer registration.

(1) In general.

(2) Effect of dealer tax non-compliance.

(d) Vehicle transfer election by electing taxpayer to transfer credit.

(e) Federal income tax consequences of the vehicle transfer election.

(1) Treatment of electing taxpayer.

(2) Treatment of eligible entity.

(3) Form of payment from eligible entity to electing taxpayer.

(4) Application of certain other requirements.

(5) Examples.

(f) Advance payments received by eligible entities.

(1) In general.

(2) Requirements for a registered dealer to become an eligible entity.

(3) Suspension of registered dealer eligibility.

(4) Revocation of registered dealer eligibility.

(g) Increase in tax.

(1) Recapture where taxpayer exceeds modified adjusted gross income limitation.

(2) Excessive payments.

(i) In general.

(ii) Reasonable cause.

(iii) Excessive payment defined.

(iv) Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.

(3) Example.

(h) Requirement of return.

(1) In general.

(2) Income tax return.

(i) Two vehicle transfer elections per year.

(j) Severability.

(k) Applicability date.

§1.25E-1 Credit for previously-owned clean vehicles.

(a) *In general.* Section 25E(a) of the Internal Revenue Code (Code) allows as a credit against the tax imposed by chapter 1 of the Code (chapter 1) for the taxable year of a taxpayer an amount equal to the lesser of \$4,000, or the amount equal to 30 percent of the sale price of a previously-owned clean vehicle, when that previously-owned clean vehicle is placed in service during the taxable year by a taxpayer that acquired the previously-owned clean vehicle in a qualified sale in which that taxpayer is a qualified buyer. This section provides definitions and generally applicable rules that apply for purposes of determining the credit under section 25E and the section 25E regulations (as defined in paragraph (b)(10) of this section) (section 25E credit). Section 1.25E-2 provides special rules under section 25E(e). Section 1.25E-3 provides rules under section 25E(f).

(b) *Definitions.* The following definitions apply for purposes of the section 25E regulations.

(1) *Dealer.* Dealer has the meaning provided in section 25E(c)(2)(A) by reference to section 30D(g)(8), except that the term does not include persons licensed solely by a territory of the United States, and includes a dealer licensed in any jurisdiction described in section 30D(g)(8) (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which its licensed.

(2) *Incentive.* For purposes of the definition of *sale price* in paragraph (b)(9) of this section, *incentive* means any reduction in total sale price offered to and accepted by a taxpayer from the dealer or manufacturer, other than a reduction in the form of a partial payment or down payment for the purchase of a previously-owned clean vehicle pursuant to section 25E(f) and §1.25E-3.

(3) *Modified adjusted gross income.* Modified adjusted gross income has the meaning provided in section 25E(b)(3).

(4) *Placed in service.* A previously-owned clean vehicle is considered to be placed in service on the date the taxpayer takes possession of the vehicle.

(5) *Previously-owned clean vehicle.* Previously-owned clean vehicle has the meaning provided in section 25E(c)(1).

(6) *Qualified buyer.* Qualified buyer means, with respect to a sale of a motor vehicle, a taxpayer—

(i) Who is an individual;

(ii) Who purchases such vehicle for use and not for resale;

(iii) With respect to whom no deduction is allowable to another taxpayer under section 151 of the Code; and

(iv) Who has not been allowed a credit under section 25E and this section for any sale occurring during the period beginning three calendar years before the date of the sale of the vehicle and ending on the date of the sale.

(7) *Qualified manufacturer.* Qualified manufacturer has the meaning provided in section 30D(d)(3).

(8) *Qualified sale*—(i) *In general.* Qualified sale means a sale of a motor vehicle—

(A) By a dealer (as defined in paragraph (b)(1) of this section);

(B) For a sale price that does not exceed \$25,000; and

(C) That is the first transfer of the motor vehicle after August 16, 2022 (the date of enactment of section 25E), to a qualified buyer other than the person with whom the original use of such vehicle commenced.

(ii) *First transfer rule.* To be a *qualified sale*, a transfer must be the first transfer since August 16, 2022, as shown by vehicle history, of a previously-owned clean vehicle after the sale to the person with whom the original use of such vehicle commenced. For purposes of this paragraph (b)(8)(ii), a transfer to or between dealers is ignored. The taxpayer may rely on the dealer's provision of the vehicle history in determining whether the first transfer rule in this paragraph (b)(8)(ii) is satisfied.

(9) *Sale price.* The *sale price* of a previously-owned clean vehicle means the total sale price agreed upon by the buyer

and dealer in a written contract at the time of sale, including any delivery charges and after the application of any incentives, but excluding separately-stated taxes and fees required by State or local law. The sale price of a previously-owned clean vehicle is determined before the application of any trade-in value.

(10) *Section 25E regulations.* Section 25E regulations means this section and §§1.25E-2 and 1.25E-3.

(11) *Seller report.* Seller report means the report described in section 25E(c)(1)(D)(i) by reference to section 30D(d)(1)(H) and provided by the seller of a vehicle to the taxpayer and to the IRS electronically in the manner provided in, and containing the information described in, guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) (a) of this chapter). The seller report must be provided to the IRS electronically. The term seller report does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

(c) *Limitation based on modified adjusted gross income*—(1) *In general.* No section 25E credit is allowed for any taxable year if—

(i) The lesser of—

(A) The modified adjusted gross income of the taxpayer for such taxable year; or

(B) The modified adjusted gross income of the taxpayer for the preceding taxable year; exceeds

(ii) The threshold amount.

(2) *Threshold amount.* For purposes of paragraph (c)(1) of this section, the threshold amount is determined based on the taxpayer's return filing status for the taxable year, as set forth in paragraphs (c) (2)(i) through (iii) of this section—

(i) In the case of a joint return or a surviving spouse (as defined in section 2(a) of the Code), the threshold amount is \$150,000.

(ii) In the case of a head of household (as defined in section 2(b) of the Code), the threshold amount is \$112,500.

(iii) In the case of a taxpayer not described in paragraph (c)(2)(i) or (ii) of this section, the threshold amount is \$75,000.

(3) *Special rule for change in filing status.* If the taxpayer's filing status for

the taxable year differs from the taxpayer's filing status in the preceding taxable year, then the taxpayer satisfies the limitation described in paragraph (c)(1) of this section if the taxpayer's modified adjusted gross income does not exceed the threshold amount in either year based on the applicable filing status for that taxable year.

(d) *Limitation on multiple owners*—(1) *In general.* The amount of the section 25E credit attributable to a previously-owned clean vehicle may be claimed on only one tax return. In the event a previously-owned clean vehicle is placed in service by multiple owners (for example, in the case of married individuals filing separate returns), no allocation or proration of the section 25E credit is available.

(2) *Seller reporting.* The name and taxpayer identification number of the vehicle owner claiming the section 25E credit must be listed on the seller report pursuant to sections 25E(c)(1)(D)(i) and 30D(d)(1)(H). The credit will be allowed only on the tax return of the owner listed in the seller report.

(e) *Examples.* The following examples illustrate the application of the rules in this section.

(1) *Example 1: First transfer since enactment of section 25E.* A two-year-old qualifying vehicle has been sold as used prior to August 16, 2022 (the date of enactment of section 25E). The next sale of the vehicle occurs on September 1, 2023, for a sale price below \$25,000 from a dealer to a qualified buyer whose modified adjusted gross income does not exceed the limitation described in paragraph (c) of this section. This sale is a qualified sale pursuant to paragraph (b)(8) of this section and, therefore, the buyer will qualify for the section 25E credit.

(2) *Example 2: Multiple transfers since enactment of section 25E.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, for a sale price above \$25,000. The first sale of the used vehicle would not qualify for a credit under section 25E because the sale price exceeded \$25,000. The second sale is not a qualified sale because it was not the first transfer after enactment of section 25E.

(3) *Example 3: First buyer is a commercial buyer.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, to a partnership, for a sale price below \$25,000. The first sale would not qualify for a credit under section 25E because the buyer is a partnership, not an individual. The second sale is not a qualified sale because it is not the first transfer after enactment of section 25E.

(4) *Example 4: First buyer exceeds the modified adjusted gross income limits.* The facts are the same

as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurs after August 16, 2022, and was sold to a buyer whose modified adjusted gross income exceeds the limitation described in paragraph (c) of this section. Subsequently, the vehicle is sold again for less than \$25,000 to a qualified buyer whose modified adjusted gross income is below the limitation. The first sale would not qualify for a credit under section 25E because the buyer's modified adjusted gross income exceeds the limitation, and the second sale is not a qualified sale because it is not the first transfer after the enactment of section 25E.

(5) *Example 5: First buyer elects to not take the section 25E credit.* The facts are the same as in paragraph (e)(1) of this section (*Example 1*), except that the first sale of the used vehicle occurred after August 16, 2022, and was sold to a qualified buyer for a sale price below \$25,000, but that first buyer elects to not claim the section 25E credit. The second sale is not a qualified sale because it is not the first transfer after the enactment of section 25E.

(f) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(g) *Applicability date.* This section applies to previously-owned clean vehicles placed in service in taxable years beginning after October 10, 2023.

§1.25E-2 Special rules.

(a) *In general.* This section provides additional guidance under section 25E(e) of the Internal Revenue Code (Code), which incorporates rules similar to the rules of section 30D(f) other than section 30D(f)(10) or 30D(f)(11). Unless otherwise provided in this section, the rules of section 30D(f) apply to section 25E and the section 25E regulations (as defined in §1.25E-1(b)(10)) in the same manner by replacing, if applicable, any reference to section 30D or the section 30D credit with a reference to section 25E or the section 25E credit.

(b) *No double benefit*—(1) *In general.* Under sections 25E(e) and 30D(f)(2), the amount of any deduction or other credit allowable under chapter 1 of the Code (chapter 1) for a vehicle for which a section 25E credit is allowable must be reduced by the amount of the section 25E credit allowed for such vehicle.

(2) *Interaction of section 30D and section 25E no double benefit rules.* A section 30D credit that has been allowed with respect to a vehicle in a taxable year

before the year in which a section 25E credit under section 25E is allowable for that vehicle does not reduce the amount allowable under section 25E.

(c) *Recapture*—(1) *In general.* This paragraph (c) provides rules regarding the recapture of the section 25E credit.

(i) *Cancelled sale.* If the sale of a vehicle between the taxpayer and dealer is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as not having occurred (and no transfer is considered to have occurred by reason of the cancelled sale), and the vehicle will, therefore, still qualify for the section 25E credit upon a subsequent sale meeting the requirements of section 25E and the section 25E regulations;

(C) The seller report (as defined in §1.25E-1(b)(11)) must be rescinded by the seller in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter); and

(D) The taxpayer cannot make an election to transfer the credit under section 25E(f) and §1.25E-3.

(ii) *Vehicle return.* If a taxpayer returns a vehicle to the dealer within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 25E credit with respect to the vehicle;

(B) The sale will be treated as having occurred (and a transfer is therefore considered as having occurred by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale, unless the vehicle history does not reflect the prior sale and return; if the vehicle history does not reflect the prior sale and return, the vehicle remains eligible for the section 25E credit under the first transfer rule described in §1.25E-1(b)(8)(ii);

(C) The seller report (as defined in §1.25E-1(b)(11)) must be updated by the seller; and

(D) Any vehicle transfer election made pursuant to section 25E(f) and §1.25E-3, if applicable, will be treated as nullified and any advance payment made pursuant to section 25E(f) and §1.25E-3, if applicable, will be collected from the eligible

entity as an excessive payment pursuant to §1.25E-3.

(iii) *Resale*. If a taxpayer resells the vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated as having purchased the previously-owned clean vehicle with the intent to resell, and—

(A) The taxpayer may not claim the section 25E credit with respect to the vehicle;

(B) The sale to the taxpayer will be treated as occurring (and a transfer is therefore considered as occurring by reason of the sale), and the vehicle will not qualify for the section 25E credit upon a subsequent sale;

(C) The seller report (as defined in §1.25E-1(b)(11)) will not be updated; and

(D) Any vehicle transfer election made pursuant to section 25E(f) and §1.25E-3, if applicable, will remain in effect and any advance payment made pursuant to section 25E(f) and §1.25E-3 will not be collected from the eligible entity; and

(E) The value of the transferred credit will be collected from the taxpayer.

(iv) *Other returns and resales*. In the case of a vehicle return not described in paragraph (c)(1)(ii) or a resale not described in paragraph (c)(1)(iii), the vehicle will no longer be eligible for the section 25E credit upon a subsequent sale.

(2) *Recapture rules in the case of a vehicle transfer election*. For additional recapture rules that apply in the case of a vehicle transfer election, see §1.25E-3(g)(1). For excessive payment rules that apply in the case where an advance payment is made to an eligible entity, see §1.25E-3(g)(2).

(3) *Example: First buyer returns vehicle*. A two-year-old qualifying vehicle is sold to a qualified buyer after August 16, 2022, for less than \$25,000, but the buyer returns the vehicle to the dealer within 30 days and does not claim the credit under section 25E. The vehicle history reflects the first used sale and return. A second sale of the used vehicle is not a qualified sale because the first sale occurred after the enactment of section 25E, regardless of whether the first buyer claimed the credit under section 25E.

(d) *Branded title*. A title to a previously-owned clean vehicle indicating that such vehicle has been damaged, or is

otherwise a branded title, does not impact the vehicle's eligibility for a section 25E credit.

(e) *Seller registration*. A seller must register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter) for purposes of filing seller reports.

(f) *Requirement to file a complete income tax return*. No section 25E credit is allowed unless the taxpayer claiming such credit files an income tax return for the taxable year in which the previously-owned clean vehicle is placed in service. For purpose of this paragraph (f), the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(g) *Severability*. The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agencies' intention that the remaining provisions shall continue in effect.

(h) *Applicability date*. This section applies to previously-owned clean vehicles placed in service in taxable years beginning after [DATE OF PUBLICATION OF FINAL RULE].

§1.25E-3 Transfer of credit.

(a) *In general*. This section provides a credit transfer program under section 25E(f).

(b) *Definitions*. This paragraph (b) provides definitions that apply for purposes of section 25E(f) and this section.

(1) *Advance payment program*. *Advance payment program* means the program described in paragraph (f)(1) of this section.

(2) *Dealer*. *Dealer* has the meaning provided in §1.25-1(b)(1).

(3) *Dealer tax compliance*. *Dealer tax compliance* means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax

purposes, and all Federal tax, penalties, and interest due of the dealer as of the time of sale have been paid. A dealer that has entered into an installment agreement with the IRS for which a dealer is current on its obligations is treated as being in dealer tax compliance.

(4) *Electing taxpayer*. *Electing taxpayer* means the individual who purchases the previously-owned clean vehicle and elects to transfer the section 25E credit that would otherwise be allowable to such individual to an eligible entity pursuant to section 25E(f) and the rules of this section. A taxpayer is an electing taxpayer only if the taxpayer makes certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the Internal Revenue Bulletin, including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitations.

(5) *Eligible entity*. *Eligible entity* has the meaning provided in section 30D(g)(2) and paragraph (f)(2) of this section.

(6) *Registered dealer*. *Registered dealer* is a dealer that has completed registering with the IRS as provided in paragraph (c) of this section.

(7) *Time of sale*. *Time of sale* means the date the previously-owned clean vehicle is placed in service, as defined in §1.25E-1(b)(4).

(8) *Vehicle transfer election*. *Vehicle transfer election* has the meaning provided in sections 25E(f) and 30D(g) and paragraph (d) of this section.

(c) *Dealer registration*—(1) *In general*. A dealer must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 25E(f) and paragraph (d) of this section.

(2) *Effect of dealer tax non-compliance*. If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, then the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance payment program (and, therefore, the dealer will not be eligible to receive transferred section 25E credits) until the compliance issue is resolved. The IRS will notify the dealer in writing that the dealer is not in dealer tax

compliance, and the dealer will have the opportunity to address any failure through regular procedures. If the failure is corrected, the IRS will complete the dealer's registration for the advance payment program, and, provided all other requirements of this section are met, the dealer will then be allowed to participate in the advance payment program. Additional procedural guidance regarding this paragraph (c)(2) will be set forth in guidance published in the Internal Revenue Bulletin.

(d) *Vehicle transfer election by electing taxpayer to transfer credit.* For a previously-owned clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 25E(f) and this section to make a vehicle transfer election with respect to the vehicle, so that the 25E credit with respect to the vehicle is allowed to the eligible entity specified in the vehicle transfer election (and not to the taxpayer) pursuant to the advance payment program described in paragraph (f) of this section. The electing taxpayer, as part of the vehicle transfer election, must transfer the entire amount of the section 25E credit that would otherwise be allowable to the electing taxpayer with respect to the vehicle, and the eligible entity specified in the vehicle transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the vehicle transfer election. A vehicle transfer election is made no later than at the time of sale in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter), and, once made the vehicle transfer election is irrevocable.

(e) *Federal income tax consequences of the vehicle transfer election—*(1) *Treatment of electing taxpayer.* In the case of a vehicle transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The amount of the section 25E credit that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) (by reason of section 25E(f)) and paragraph (d) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture;

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) (by reason of 25E(f)) and paragraph (d) of this section to a vehicle transfer election is not includible in the gross income of the electing taxpayer; and

(iii) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25E(f)) and paragraph (d) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is part of the electing taxpayer's basis in the previously-owned clean vehicle prior to the application of the basis reduction rule of section 30D(f)(1) that applies by reason of section 25E(e) and §1.25E-2(a).

(2) *Treatment of eligible entity.* In the case of a vehicle transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the section 25E credit with respect to the previously-owned clean vehicle and may receive an advance payment pursuant to section 30D(g)(7) (by reason of section 25(f)) and paragraph (f) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) (by reason of section 25(f)) and paragraph (d) of this section to an electing taxpayer is not deductible by the eligible entity; and

(v) The payment made by an eligible entity to the electing taxpayer under section 30D(g)(2)(C) (by reason of section 25(f)) and paragraph (d) of this section is treated as paid by the electing taxpayer to the eligible entity as part of the purchase price of the previously-owned clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized of the eligible entity under section 1001 of the Code and the regulations in this part under section 1001.

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 25E credit allowed that is transferred to the eligible entity;

(B) Such section 25E credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer.* The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (e)(1) and (2) of this section is the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for purchase of the previously-owned clean vehicle.

(4) *Application of certain other requirements.* In the case of a vehicle transfer election, the following additional rules apply —

(i) The requirements of section 30D(f) (1) (regarding basis reduction) and 30D(f) (2) (regarding no double benefit), by reason of section 25E(e), apply to the electing taxpayer as if the vehicle transfer election were not made (so, for example, the electing taxpayer must reduce the taxpayer's basis in the vehicle by the amount of the section 25E credit, regardless of the vehicle transfer election).

(ii) Section 30D(f)(6) (regarding the election not to take the credit), by reason of section 25E(e), will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit).

(iii) Section 30D(f)(9) (regarding the vehicle identification number (VIN) requirement), by reason of section 25E(e), and section 25E(d) (regarding the VIN requirement) will be treated as satisfied if the eligible entity provides the VIN of such vehicle to the IRS in the form and manner set forth in guidance published in the Internal Revenue Bulletin.

(5) *Examples.* The following examples illustrate the rules under paragraph (e) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than value of the credit*—(A) *Facts.* A taxpayer, who is an individual, purchases a previously-owned clean vehicle from a dealer, which is a C corporation. The taxpayer satisfies the requirements to be an electing taxpayer and elects to transfer the section 25E credit to the dealer. The dealer is a registered dealer and satisfies the requirements to be an eligible entity. The sales price the vehicle is \$24,000. The section 25E credit otherwise allowable to the electing taxpayer is \$4,000. The eligible entity makes the payment required to be made to the electing taxpayer in the form of a cash payment of \$4,000. The electing taxpayer pays back the \$4,000 to the eligible entity and pays an additional \$20,000 as the purchase price of the vehicle. The electing taxpayer's regular tax liability for the year is less than \$4,000.

(B) *Analysis.* Under paragraph (e)(1) of this section, the electing taxpayer may transfer the credit even though the electing taxpayer's regular tax liability is less than \$4,000, and no amount of the credit will be recaptured from the taxpayer on the basis that the allowable credit exceeded their regular tax liability. The eligible entity's \$4,000 payment to the electing taxpayer is not included in the electing taxpayer's gross income, and the electing taxpayer's purchase price for the vehicle is \$24,000 (including both the \$4,000 payment and the additional \$20,000 purchase price paid), prior to the application of the basis reduction rule of section 30D(f)(1) (by reason of section 25E(e)). After application of the basis reduction, the electing taxpayer's basis in the vehicle is \$20,000. The eligible entity is eligible to receive an advance payment of \$4,000 for the transferred section 25E credit as provided in section 30D(g)(7) (by reason of section 25E(f)) and paragraph (f) of this section. Under paragraph (d)(2) of this section, the eligible entity may receive the advance payment regardless of whether the eligible entity's regular tax liability is less than \$4,000. The advance payment is not treated as a credit toward the eligible entity's tax liability (if any), nor is it included in the eligible entity's gross income, the eligible entity's \$4,000 payment to the electing taxpayer is not deductible, and the eligible entity's amount realized is \$24,000 upon the sale of the vehicle (including both the \$4,000 payment and the additional \$20,000 purchase price of the vehicle).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer*—(A) *Facts.* The facts are the same as in paragraph (e)(5)(i)(A) of this section (facts of *Example 1*), except that the eligible entity makes the payment to the electing taxpayer in the form of a reduction in the purchase price (rather than as a cash payment).

(B) *Analysis.* Paragraph (e)(3) of this section provides that the application of paragraphs (e)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in purchase price). Thus, the analysis is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership*—(A) *Facts.* The facts are the same as in paragraph (e)

(5)(i)(A) of this section (facts of *Example 1*), except that the dealer is a partnership.

(B) *Analysis.* The analysis as to the electing taxpayer is the same as in paragraph (e)(5)(i)(B) of this section (analysis of *Example 1*). Because the eligible entity is a partnership, paragraph (e)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership (and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax exempt income to the partnership for purposes of the Code.

(f) *Advance payments received by eligible entities*—(1) *In general.* An eligible entity may receive advance payments from the IRS corresponding to the amount of the section 25E credit for which an election was made by an electing taxpayer to transfer the credit to the eligible entity pursuant to section 30D(g) (by reason of section 25E(f)) and paragraph (d) of this section before the eligible entity files its Federal income tax return for the taxable year that includes the taxable year with respect to which the vehicle transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive the section 25E credit transferred under section 25E(f) pursuant to paragraph (d) of this section. An eligible entity receiving an advance payment may not claim the section 25E credit on a Federal income tax return.

(2) *Requirements for a registered dealer to become an eligible entity.* A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment, by meeting the following requirements—

(i) The registered dealer submits all required registration information and is in dealer tax compliance.

(ii) The registered dealer retains information regarding the vehicle transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter).

(iii) The eligible entity meets any other requirements of section 25E(f) by reference to section 30D(g) and this section included in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter) or in forms and instructions.

(3) *Suspension of registered dealer eligibility.* A registered dealer may be suspended from the advance payment program pursuant to the procedures described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter). Any decision made by the IRS relating to the suspension of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registered dealer eligibility.* A registered dealer's registration may be revoked pursuant to the procedures described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(g) *Increase in tax*—(1) *Recapture where taxpayer exceeds modified adjusted gross income limitation.* If a taxpayer who elected to transfer the credit under section 25E(f) and this section has modified adjusted gross income that exceeds the limitation in section 25E(b), the income tax imposed on such taxpayer under chapter 1 of the Code (chapter 1) for the taxable year in which the vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The taxpayer must reconcile such amounts on the tax return described in paragraph (h) of this section.

(2) *Excessive payments*—(i) *In general.* This paragraph (g)(2) provides rules under section 25E(f) by reference to section 30D(g)(7)(B), under which rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of:

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause.* The amount described in paragraph (g)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a vehicle returned to the eligible entity within 30 days of placing the vehicle in service for which a vehicle transfer election was made by the electing taxpayer, as described in §1.25E-2(c)(1) (ii), the eligible entity will be treated as demonstrating reasonable cause.

(iii) *Excessive payment defined.* *Excessive payment* means an advance payment made—

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in paragraph (f)(2) of this section; or

(B) Except as provided in paragraph (g)(2)(iv) of this section, to an eligible entity with respect to a vehicle to the extent the payment exceeds the amount of the credit that, without application of section 25E(f) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.* Any excess described in paragraph (g)(2)(iii)(B) of this section due to the purchaser exceeding the limitation based on modified adjusted gross income provided in section 25E(b) is not an excessive payment. Instead, the value of the amount of the advance payment is recaptured from the purchaser under section 25E(e) and paragraph (g)(1) of this section.

(3) *Example.* This paragraph (g)(3) provides an example to illustrate the excessive payment rules provided in paragraph (g)(2) of this section.

(i) *Facts.* In 2024, D, a registered dealer, receives an advance payment of \$4,000 with respect to a credit transferred under section 25E(f)(1) and paragraph (d) of this section with respect to a previously-owned clean vehicle. In 2025, the IRS determines that the registered dealer was not an eligible entity with respect to the vehicle at the time of the receipt of the advance payment in 2024 because the registered dealer failed to satisfy a requirement in section 30D(g)(2) (applicable by reason of section 25E(f)) and paragraph (f)(2) of this section to be an eligible

entity with respect to the vehicle. D is unable to show reasonable cause for the failure.

(ii) *Analysis.* Under paragraph (g)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (g)(2)(iii) of this section, the entire amount of the \$4,000 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) (applicable by reason of section 25E(f)) and paragraph (g)(2) of this section. Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by \$4,800 in 2025 (the taxable year of the IRS determination). This is comprised of the \$4,000 value of the credit plus the \$800 penalty, calculated as 20% penalty on such \$4,000 (20% * \$4,000 = \$800). This treatment applies regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(h) *Requirement of return—(1) In general.* An electing taxpayer that makes a vehicle transfer election must file an income tax return for the taxable year in which the vehicle transfer election is made and indicate such election on the return per instructions. The electing taxpayer must include the VIN of the new clean vehicle on such return, as provided for in forms and instructions.

(2) *Income tax return.* For purposes of this section, the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, or any other forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(i) *Two vehicle transfer elections per year.* A taxpayer may make no more than two transfer elections per taxable year, consisting of either two section 30D credits or one section 30D credit and one section 25E credit. In the case of a joint return, each individual taxpayer may make no more than two transfer elections per taxable year.

(j) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(k) *Applicability date.* This section applies to taxable years ending after December 31, 2023.

Par 3. Section 1.30D-0, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by:

1. Adding entry (j) to §1.30D-2;

2. In §1.30D-4:

i. Revising the heading; and

ii. Adding entries (f), (f)(1), (f)(1)(i) through (iv), (f)(2), (g), and (h); and

3. Adding an entry in numerical order for §1.30D-5.

The revisions and additions read as follows:

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* * * * *

§1.30D-2 Definitions for purposes of section 30D.

* * * * *

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* * * * *

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* * * * *

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Par 4. Section 1.30D-2, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by adding paragraph (j) to read as follows:

§1.30D-2 Definitions for purposes of section 30D.

* * * * *

(j) *Seller report.* *Seller report* means the report described in section 30D(d)(1)(H) and provided by the seller of a vehicle to the taxpayer and the IRS in the manner provided in, and containing the information described in, guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter). The seller report must be provided to the IRS electronically. The term *seller report* does not include a report rejected by the IRS due to the information contained therein not matching IRS records.

Par 5. Section 1.30D-4, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by adding paragraphs (f) through (h) to read as follows:

§1.30D-4 Special rules.

* * * * *

(f) *Recapture rules*—(1) *In general.* This paragraph (f) provides rules under section 30D(f)(5) regarding the recapture of the section 30D credit.

(i) *Cancelled sale.* If the sale of a vehicle between the taxpayer and seller is cancelled before the taxpayer places the vehicle in service, then—

(A) The taxpayer may not claim the section 30D credit with respect to the vehicle;

(B) The sale will be treated as not having occurred and the vehicle will be considered available for original use by another taxpayer (regardless of the cancelled sale), and the vehicle will, therefore, still be eligible for the section 30D credit;

(C) The seller report must be rescinded by the seller in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter); and

(D) The taxpayer cannot make a vehicle transfer election under section 30D(g) and §1.30D-5(c) with respect to the cancelled sale.

(ii) *Vehicle return.* If a taxpayer returns to the seller a vehicle within 30 days of placing such vehicle in service, then—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report must be updated by the seller; and

(D) A vehicle transfer election under 30D(g) and §1.30D-5(c), if applicable, will be treated as nullified and any advance payment made pursuant to section 30D(g) and §1.30D-5(e) will be collected from the eligible entity as an excessive payment pursuant to §1.30D-5(f).

(iii) *Resale.* If a taxpayer resells the vehicle within 30 days of placing the vehicle in service, then the taxpayer is treated

as having purchased the new clean vehicle with the intent to resell, and—

(A) The taxpayer cannot claim the section 30D credit with respect to the vehicle;

(B) The vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit;

(C) The seller report will not be updated;

(D) A vehicle transfer election under 30D(g) and §1.30D-5(c), if applicable, will remain in effect and any advance payment made pursuant to section 30D(g) and §1.30D-5(e) will not be collected from the eligible entity; and

(E) The value of any transferred credit will be collected from the taxpayer.

(iv) *Other vehicle returns and resales.* In the case of a vehicle return not described in paragraph (f)(1)(ii) of this section or a resale not described in paragraph (f)(1)(iii) of this section, the vehicle will no longer be considered available for original use by another taxpayer, and, therefore, the vehicle will no longer be eligible for the section 30D credit.

(2) *Recapture rules in the case of a vehicle transfer election.* For additional recapture rules that apply in the case of a vehicle transfer election, see §1.30D-5(f)(1). For excessive payment rules that apply in the case where an advance payment is made to an eligible entity, see §1.30D-5(f)(2).

(g) *Seller registration.* A seller must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter) for purposes of filing seller reports.

(h) *Requirement to file a complete income tax return.* No section 30D credit is allowed unless the taxpayer claiming such credit files an income tax return for the taxable year in which the new clean vehicle is placed in service. For purpose of this paragraph (h), the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

Par 6. Section 1.30D-5 is added to read as follows:

§1.30D-5 Transfer of credit and recapture.

(a) *Definitions.* This paragraph (a) provides definitions that apply for purposes of section 30D(g) and this section.

(1) *Advance payment program.* *Advance payment program* means the program described in paragraph (e)(1) of this section.

(2) *Dealer.* *Dealer* has the meaning provided in section 30D(g)(8), except that, for purposes of this section, the term does not include persons licensed solely by a territory of the United States, and includes a dealer licensed in any jurisdiction (other than one licensed solely by a territory of the United States) that makes sales at sites outside of the jurisdiction in which its licensed.

(3) *Dealer tax compliance.* *Dealer tax compliance* means that all required Federal information and tax returns of the dealer have been filed, including for Federal income and employment tax purposes, and all Federal tax, penalties, and interest due of the dealer as of the time of sale have been paid. A dealer who has entered into an installment agreement with the Internal Revenue Service (IRS) for which a dealer is current on its obligations is treated as in Dealer tax compliance.

(4) *Electing taxpayer.* *Electing taxpayer* means the individual who purchases and places in service a new clean vehicle and elects to transfer the credit under section 30D that would otherwise be allowable to such individual to an eligible entity pursuant to section 30D(g) and paragraph (c) of this section. A taxpayer is an electing taxpayer only if the taxpayer make certain attestations to the registered dealer, pursuant to procedures provided in guidance published in the Internal Revenue Bulletin, including that the taxpayer does not anticipate exceeding the modified adjusted gross income limitations and that the taxpayer will use the vehicle predominantly for personal use.

(5) *Eligible entity.* *Eligible entity* has the meaning provided in section 30D(g)(2) and paragraph (e)(2) of this section.

(6) *Registered dealer.* A *registered dealer* is a dealer that has completed

registration with the IRS as provided in paragraph (b) of this section.

(7) *Time of sale.* *Time of sale* means the date the new clean vehicle is placed in service. A new clean vehicle is placed in service on the date the electing taxpayer takes possession of the vehicle.

(8) *Vehicle transfer election.* *Vehicle transfer election* has the meaning provided in section 30D(g) and paragraph (c) of this section.

(b) *Dealer registration*—(1) *In general.* A dealer must first register with the IRS in the manner set forth in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter) for the dealer to receive credits transferred by an electing taxpayer pursuant to section 30D(g) and paragraph (c) of this section.

(2) *Effect of dealer tax non-compliance.* If the dealer is not in dealer tax compliance for any of the taxable periods during the last five taxable years, the dealer may complete its initial registration with the IRS, but the dealer will not be eligible for the advance payment program (and, therefore, the dealer will not be eligible to receive transferred section 30D credits) until the compliance issue is resolved. If the failure is corrected, the IRS will complete the dealer's registration for the advance payment program, and, provided all other requirements of section 30D(g) and this section are met, the dealer will then be allowed to participate in the advance payment program. Additional procedural guidance regarding this paragraph (b)(2) will be set forth in guidance published in the Internal Revenue Bulletin.

(c) *Vehicle transfer election by electing taxpayer to transfer credit.* For a new clean vehicle placed in service after December 31, 2023, an electing taxpayer may elect to apply the rules of section 30D(g) and this section to make a vehicle transfer election with respect to the vehicle so that the section 30D credit with respect to the vehicle is allowed to the eligible entity specified in the vehicle transfer election (and not to the electing taxpayer) pursuant to the advance payment program described in paragraph (e) of this section. The electing taxpayer, as part of the vehicle transfer election, must transfer the entire amount of the credit that would otherwise be allowable to the electing taxpayer under section 30D

with respect to the vehicle, and the eligible entity specified in the vehicle transfer election must pay the electing taxpayer an amount equal to the amount of the credit included in the vehicle transfer election. A vehicle transfer election is made not later than at the time of sale in the manner set forth in guidance published in the Internal Revenue Bulletin, and, once made, the vehicle transfer election is irrevocable. No vehicle transfer election may be made to transfer an amount of credit that would otherwise be allowed to the electing taxpayer under section 38.

(d) *Federal income tax consequences of the vehicle transfer election*—(1) *Treatment of electing taxpayer.* In the case of a vehicle transfer election, the Federal income tax consequences for the electing taxpayer are as follows—

(i) The credit amount under section 30D that the electing taxpayer elects to transfer to the eligible entity under section 30D(g) and paragraph (c) of this section may exceed the electing taxpayer's regular tax liability (as defined in section 26(b)(1) of the Code) for the taxable year in which the sale occurs, and the excess, if any, is not subject to recapture.

(ii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section to an electing taxpayer pursuant to the vehicle transfer election is not includible in the gross income of the electing taxpayer.

(iii) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the new clean vehicle. Thus, the repayment by the electing taxpayer is included in the electing taxpayer's basis in the new clean vehicle prior to the application of the basis reduction rule in section 30D(f)(1).

(2) *Treatment of eligible entity.* In the case of a vehicle transfer election, the Federal income tax consequences for the eligible entity are as follows—

(i) The eligible entity is allowed the credit under section 30D with respect to the new clean vehicle and may receive an advance payment pursuant to section 30D(g)(7) and paragraph (e) of this section;

(ii) Advance payments received by the eligible entity are not treated as a tax credit in the hands of the eligible entity and may exceed the eligible entity's regular tax liability (as defined in section 26(b)(1)) for the taxable year in which the sale occurs;

(iii) An advance payment received by the eligible entity is not included in the gross income of the eligible entity;

(iv) The payment made by an eligible entity under section 30D(g)(2)(C) and paragraph (c) of this section to an electing taxpayer is not deductible by the eligible entity;

(v) The payment made by an eligible entity to an electing taxpayer under section 30D(g)(2)(C) and paragraph (c) of this section is treated as repaid by the electing taxpayer to the eligible entity as part of the purchase price of the new clean vehicle. Thus, the repayment by the electing taxpayer is treated as an amount realized of the eligible entity under section 1001 of the Code and the regulations in this part under section 1001; and

(vi) If the eligible entity is a partnership or an S corporation, then—

(A) The IRS will make the advance payment to such partnership or S corporation equal to the amount of the section 30D credit allowed that is transferred to the eligible entity;

(B) Such section 30D credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to such entity (and not allocated or otherwise allowed to its partners or shareholders) for such taxable year; and

(C) The amount of the advance payment is not treated as tax exempt income to the partnership or S corporation for purposes of the Code.

(3) *Form of payment from eligible entity to electing taxpayer.* The tax treatment of the payment made by the eligible entity to the electing taxpayer described in paragraphs (d)(1) and (2) of this section is the same regardless of whether the payment is made in cash or in the form of a partial payment or down payment for purchase of the new clean vehicle.

(4) *Application of certain other requirements.* In the case of a vehicle transfer election, the following additional rules apply—

(i) The requirements of section 30D(f)(1) (regarding basis reduction) and 30D(f)

(2) (regarding no double benefit) apply to the electing taxpayer as if the vehicle transfer election were not made (so, for example, the electing taxpayer must reduce its basis in the vehicle by the amount of the section 30D credit, regardless of the vehicle transfer election);

(ii) Section 30D(f)(6) (regarding the election not to take the credit) will not apply (in other words, by electing to transfer the credit, the electing taxpayer is electing to take the credit); and

(iii) Section 30D(f)(9) (regarding the VIN requirement) will be treated as satisfied if the eligible entity provides the vehicle identification number of such vehicle to the IRS in the form and manner set forth in guidance published in the Internal Revenue Bulletin.

(5) *Examples.* The following examples illustrate the rules under paragraph (d) of this section.

(i) *Example 1: Electing taxpayer's regular tax liability less than value of the credit—(A) Facts.* A taxpayer, who is an individual, purchases a new clean sports utility vehicle from a dealer that is a C corporation. The taxpayer satisfies the requirements to be an electing taxpayer and elects to transfer the section 30D credit to the dealer. The dealer is a registered dealer and satisfies the requirements to be an eligible entity. The purchase price for the vehicle is \$57,500. The credit otherwise allowable to the electing taxpayer by section 30D with respect to the vehicle is \$7,500. The eligible entity makes the payment required to be made to the electing taxpayer in the form of a cash payment of \$7,500. The electing taxpayer pays back the \$7,500 to the eligible entity and pays an additional \$50,000 as the purchase price of the vehicle. The electing taxpayer's regular tax liability for the year is less than \$7,500.

(B) *Analysis.* Under paragraph (d)(1) of this section, the electing taxpayer may transfer the credit even though the electing taxpayer's regular tax liability is less than \$7,500, and no amount of the credit will be recaptured from the taxpayer on the basis that the allowable credit exceeded their regular tax liability. The eligible entity's \$7,500 payment to the electing taxpayer is not included in the electing taxpayer's gross income, and the electing taxpayer's purchase price for the vehicle is \$57,500 (including both the \$7,500 payment and the additional \$50,000 purchase price paid), prior to the application of the basis reduction rule of section 30D(f)(1). After application of the basis reduction, the electing taxpayer's basis in the vehicle is \$50,000. The eligible entity is eligible to receive an advance payment of \$7,500 for the transferred section 30D credit as provided in section 30D(g)(7) and paragraph (e) of this section. Under paragraph (d)(2) of this section, the eligible entity may receive the advance payment regardless of whether the eligible entity's regular tax liability is less than \$7,500. The advance payment is not treated as a credit toward the eligible entity's tax liability (if any), nor is it included in

the eligible entity's gross income, the eligible entity's \$7,500 payment to the electing taxpayer is not deductible, and the eligible entity's amount realized is \$57,500 upon the sale of the vehicle (including both the \$7,500 payment and the additional \$50,000 purchase price of the vehicle).

(ii) *Example 2: Non-cash payment by eligible entity to electing taxpayer—(A) Facts.* The facts are the same as in paragraph (d)(5)(i)(A) of this section (facts of *Example 1*), except that the eligible entity makes the payment to the electing taxpayer in the form of a reduction in the purchase price (rather than as a cash payment).

(B) *Analysis.* Paragraph (d)(3) of this section provides that the application of paragraphs (d)(1) and (2) of this section is not dependent on the form of payment from an eligible entity to an electing taxpayer (for example, a payment in cash or a payment in the form of a reduction in purchase price). Thus, the analysis is the same as in paragraph (d)(5)(i)(B) of this section (analysis of *Example 1*).

(iii) *Example 3: Eligible entity is a partnership—(A) Facts.* The facts are the same as in paragraph (d)(5)(i)(A) of this section (facts of *Example 1*), except that the dealer is a partnership.

(B) *Analysis.* The analysis as to the electing taxpayer is the same as in paragraph (d)(5)(i)(B) of this section (analysis of *Example 1*). Because the eligible entity is a partnership, paragraph (d)(2)(vi) of this section applies. Thus, the advance payment is made to the partnership, the credit is reduced to zero and is, for any other purpose of the Code, deemed to have been allowed solely to the partnership (and not allocated or otherwise allowed to its partners) for such taxable year. The amount of the advance payment is not treated as tax exempt income to the partnership for purposes of the Code.

(e) *Advance payments received by eligible entities—(1) In general.* An eligible entity may receive advance payments from the IRS corresponding to the amount of the section 30D credit for which a vehicle transfer election was made by an electing taxpayer to the eligible entity pursuant to section 30D(g) and paragraph (c) of this section before the eligible entity files its Federal income tax return for the taxable year that includes the taxable year with respect to which the vehicle transfer election corresponds. This advance payment program is the exclusive mechanism for an eligible entity to receive any payment related to a section 30D credit pursuant to section 30D(g) and paragraph (c) of this section. The eligible entity may not claim a section 30D credit on a Federal income tax return.

(2) *Requirements for a registered dealer to become an eligible entity.* A registered dealer qualifies as an eligible entity, and may therefore receive an advance payment, by meeting the following requirements—

(i) The registered dealer submits required registration information and is in dealer tax compliance;

(ii) The registered dealer retains information regarding the vehicle transfer election for three calendar years beginning with the year immediately after the year in which the vehicle is placed in service, as described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter); and

(iii) The registered dealer meets any other requirements of section 30D(g) and this section included in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter).

(3) *Suspension of registered dealer eligibility.* A registered dealer may be suspended from the advance payment program pursuant to the procedures as described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter). Any decision made by the IRS relating to the suspension of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(4) *Revocation of registered dealer eligibility.* A registered dealer's registration may be revoked pursuant to the procedures as described in guidance published in the Internal Revenue Bulletin (see §601.601 of this chapter). Any decision made by the IRS relating to the revocation of a dealer's registration is not subject to administrative appeal to the IRS Independent Office of Appeals unless the IRS and the IRS Independent Office of Appeals agree that such review is available and the IRS provides the time and manner for such review.

(f) *Increase in tax—(1) Recapture where taxpayer exceeds modified adjusted gross income limitation.* If the section 30D credit would otherwise (but for section 30D(g) and the rules of this section) not be allowable to a taxpayer that elected to transfer the credit under section 30D(g) and this section because the taxpayer exceeds the limitation based on modified adjusted gross income in section 30D(f)(10), then the income tax imposed on such taxpayer under chapter 1 of the

Code (chapter 1) for the taxable year in which such vehicle was placed in service is increased by the amount of the payment received by the taxpayer. The taxpayer must reconcile such amounts on the tax return described in paragraph (g)(2) of this section.

(2) *Excessive payments—(i) In general.* This paragraph (f)(2) provides rules under section 30D(g)(7)(B), under which rules similar to the rules of section 6417(d)(6) of the Code apply to the advance payment program. In the case of any advance payment that the IRS determines constitutes an excessive payment, the tax imposed on the eligible entity under chapter 1, regardless of whether such entity would otherwise be subject to tax under chapter 1, for the taxable year in which such determination is made will be increased by the sum of the following amounts—

(A) The amount of the excessive payment; plus

(B) An amount equal to 20 percent of such excessive payment.

(ii) *Reasonable cause.* The amount described in paragraph (f)(2)(i)(B) of this section will not apply to an eligible entity if the eligible entity demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause. In the case of a vehicle returned to the eligible entity within 30 days of being placed in service for which a vehicle transfer election was made by the electing taxpayer, as described in §1.30D-4(d)(1) (ii), the eligible entity will be treated as demonstrating reasonable cause.

(iii) *Excessive payment defined.* Excessive payment means an advance payment made—

(A) To a registered dealer that fails to meet the requirements to be an eligible entity provided in section 30D(g)(2) and paragraph (e)(2) of this section; or

(B) Except as provided in paragraph (f)(2)(iv) of this section, to an eligible entity with respect to a vehicle to the extent the payment exceeds the amount of the credit that, without application of section 30D(g) and this section, would be otherwise allowable to the electing taxpayer with respect to the vehicle for such tax year.

(iv) *Special rule for cases in which the purchaser's modified adjusted gross income exceeds the limitation.* Any excess described in paragraph (f)(2)(iii)(B) of

this section due to the purchaser exceeding the limitation based on modified adjusted gross income provided in section 30D(f)(10) is not an excessive payment. Instead, the value of the amount of the advance payment is recaptured from the purchaser under section 30D(f)(10) and paragraph (f)(1) of this section.

(3) *Example.* This paragraph (f)(3) provides an example to illustrate the excessive payment rules provided in paragraph (f)(2) of this section.

(i) *Facts.* In 2024, D, a registered dealer, receives an advance payment of \$7,500 with respect to a credit transferred under section 30D(g)(1) and paragraph (c) of this section with respect to a new clean vehicle. In 2025, the IRS determines that the registered dealer was not an eligible entity with respect to the vehicle at the time of the receipt of the advance payment in 2024 because the registered dealer failed to satisfy a requirement in section 30D(g)(2) and paragraph (e)(2) of this section to be an eligible entity with respect to the vehicle. D is unable to show reasonable cause for the failure.

(ii) *Analysis.* Under paragraph (f)(2)(i) of this section, the tax imposed on D is increased by the amount of the excessive payment if the advance payment received by D constitutes an excessive payment. Under paragraph (f)(2)(iii) of this section, the entire amount of the \$7,500 advance payment received by D is an excessive payment because D did not meet the requirements to be an eligible entity under section 30D(g)(2) and paragraph (e)(2) of this section. Additionally, because D cannot show reasonable cause for its failure to meet these requirements, the tax imposed under chapter 1 on D is increased by \$9,000 in 2025 (the taxable year of the IRS determination). This is comprised of the \$7,500 value of the credit plus the \$1,500 penalty, calculated as 20% penalty on such \$7,500 ($20\% \times \$7,500 = \$1,500$). This treatment applies regardless of whether D is otherwise subject to tax under chapter 1 (for example, if D is a partnership).

(g) *Requirement of return—(1) In general.* An electing taxpayer that makes a vehicle transfer election must file an income tax return for the taxable year in which the vehicle transfer election is made and indicate such election on the return per instructions. The electing taxpayer must include the VIN of the new clean vehicle on such return, as provided for in forms and instructions.

(2) *Income tax return.* For purposes of this section, the term *income tax return* means a Form 1040, *U.S. Individual Income Tax Return*, with an attached Form 8936, *Clean Vehicle Credits*, or successor forms, and any additional forms, schedules, or statements prescribed by the Commissioner for the

purpose of making a return to report the tax under chapter 1 that includes all of the information required on the forms and in instructions.

(h) *Two vehicle transfer elections per year.* A taxpayer may make no more than two transfer elections per taxable year, consisting of either two section 30D credits or one section 30D credit and one section 25E credit. In the case of a joint return, each individual taxpayer may make no more than two transfer elections per taxable year.

(i) *Severability.* The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(j) *Applicability date.* This section applies to taxable years beginning after December 31, 2023.

PART 301—PROCEDURE AND ADMINISTRATION

Par 7. The authority citation for part 301 is amended by adding an entry in numerical order for §301.6213-2 to read, in part, as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6213-2 also issued under 26 U.S.C. 6213.

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Par 8. Section 301.6213-2 is added to read as follows:

§301.6213-2 Omission of correct vehicle identification number.

(a) *In general.* The definition of the term *mathematical or clerical error* in section 6213(g)(2) of the Internal Revenue Code (Code) includes:

(1) Under section 6213(g)(2)(T), an omission of a correct vehicle identification number required under section 30D(f)(9) of the Code (relating to credit for new clean vehicles) to be included on a return;

(2) Under section 6213(g)(2)(U), an omission of a correct vehicle identification number required under section 25E(d) of the Code (relating to credit for previously-owned clean vehicles) to be included on a return; and

(3) Under section 6213(g)(2)(V), an omission of a correct vehicle identification number required under section 45W(e) of the Code (relating to commercial clean vehicle credit) to be included on a return.

(b) *Omission of a correct vehicle identification number.* For purposes of paragraph (a) of this section, a taxpayer is treated as having omitted a correct vehicle identification number if:

(1) The vehicle identification number required to be reported under section 30D(f)(9), 25E(d), or 45W(e) is not included on the return of tax;

(2) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W;

(3) The vehicle identification number included on the return of tax is not that of a vehicle eligible for a credit under section 30D, 25E, or 45W for the year in which it is claimed;

(4) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 30D(d)(1)(H) for each new clean vehicle placed in service during the taxable year by the taxpayer who was issued the report; or

(5) The vehicle identification number included on the return of tax differs from the vehicle identification number reported to the IRS and the taxpayer under section 25E(c)(1)(D)(i) for each previously-owned clean vehicle placed in service during the taxable year by the taxpayer who was issued the report.

(c) *Applicability date.* This section applies to taxable years beginning after December 31, 2023.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register October 6, 2023, 8:45 a.m., and published in the issue of the Federal Register for October 10, 2023, 88 FR 70310.)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

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