

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 301**

[REG–113064–23]

RIN 1545–BQ86

**Transfer of Clean Vehicle Credits Under Section 25E and Section 30D****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 Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.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](mailto: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.<sup>1</sup>

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 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

<sup>1</sup> A list of approved National Motor Vehicle Title Information System data providers can be found at: [vehiclehistory.bja.ojp.gov/nmvts\\_vehiclehistory](https://vehiclehistory.bja.ojp.gov/nmvts_vehiclehistory).

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)(1)(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-5(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.

## V. Proposed Regulations Under Section 6213(g)(2)

### 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 recordkeeping 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.

\* \* \* \* \*

■ **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 an electing taxpayer pursuant 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:

**§ 1.30D-0 Table of contents.**

\* \* \* \* \*

§ 1.30D-2 *Definitions for purposes of section 30D.*

\* \* \* \* \*

(j) Seller report.

\* \* \* \* \*

§ 1.30D-4 *Special rules.*

\* \* \* \* \*

- (f) Recapture rules.
  - (1) In general.
  - (i) Cancelled sale.
  - (ii) Vehicle return.
  - (iii) Resale.
  - (iv) Other vehicle returns and resales.
- (2) Recapture rules in the case of a vehicle transfer election.
- (g) Seller registration.
- (h) Requirement to file a complete income tax return.

§ 1.30D-5 *Transfer of credit and recapture.*

- (a) Definitions.
  - (1) Advance payment program.
  - (2) Dealer.

- (3) Dealer tax compliance.
- (4) Electing taxpayer.
- (5) Eligible entity.
- (6) Registered dealer.
- (7) Time of sale.
- (8) Vehicle registration election.
- (b) Dealer registration.
  - (1) In general.
  - (2) Effect of dealer tax non-compliance.
  - (c) Election by electing taxpayer to transfer credit.
    - (d) 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.
    - (e) 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.
      - (f) 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.
        - (g) Requirement of return.
          - (1) In general.
          - (2) Income tax return.
        - (h) Two vehicle transfer elections per year.
        - (i) Severability.
        - (j) Applicability date.

■ **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% \* \$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.

\* \* \* \* \*

■ **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.*

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