Part III. Administrative, Procedural, and Miscellaneous

Credit for New Qualified Heavy-Duty Hybrid Motor Vehicles

Notice 2007–46

SECTION 1. PURPOSE.

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified hybrid motor vehicle credit under § 30B(a)(3) and (d) of the Internal Revenue Code. Specifically, this notice provides procedures for a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service (Service) both:

(1) that a heavy-duty vehicle of a particular make, model, and model year meets certain requirements that must be satisfied to claim the new qualified hybrid motor vehicle credit under § 30B(a)(3) and (d); and

(2) the amount of the credit allowable with respect to that vehicle. This notice also provides guidance to taxpayers who purchase qualified vehicles regarding the conditions under which they may rely on the vehicle manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification in determining whether a credit is allowable with respect to the vehicle and the amount of the credit. The Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND.

Section 30B(a)(3) provides for a credit determined under § 30B(d) for certain new qualified hybrid motor vehicles. The new qualified hybrid motor vehicle credit for a heavy-duty hybrid motor vehicle is determined under § 30B(d)(2)(B) and is an amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle. The qualified incremental hybrid cost is the excess of the manufacturer's suggested retail price for the qualified vehicle over the manufacturer's suggested retail price for a comparable vehicle. However, the qualified incremental hybrid cost of a vehicle is limited depending upon the gross vehicle weight rating of the vehicle. The applicable percentage varies depending upon the increase in the city fuel economy of the qualified vehicle relative to a comparable vehicle.

SECTION 3. SCOPE OF NOTICE.

.01 *Vehicles Covered*. This notice applies only to heavy-duty hybrid motor vehicles. Guidance concerning the new qualified hybrid motor vehicle credit for passenger automobiles and light trucks is provided in Notice 2006–9, 2006–6 I.R.B. 413.

.02 *Rules Common to All Qualifying Vehicles*. This notice does not address a number of rules that are common to all motor vehicles that qualify for credits under § 30B, including (1) rules under which lessors may claim the credits allowable under § 30B, (2) the rule preventing the credits from being used to reduce alternative minimum tax liability, and (3) rules relating to recapture of the credit. Certain rules applicable to all motor vehicles that qualify for credits under § 30B are described in Fact Sheet 2007–9 (*http://www.irs.ustreas.gov/newsroom/article/0,,id=165649,00.html*).

SECTION 4. MEANING OF TERMS.

The following definitions apply for purposes of this notice:

(1) *In General*. Terms used in this notice and not defined in this section have the same meaning as when used in § 30B.

(2) *Heavy-Duty Hybrid Motor Vehicle*. The term "heavy-duty hybrid motor vehicle" means any hybrid motor vehicle that is not a passenger automobile or light truck within the meaning of section 4(2) of Notice 2006–9. Thus, a hybrid motor vehicle (including a hybrid motor vehicle that is a medium-duty passenger vehicle, as defined in 40 C.F.R. § 600.002–08) that has a gross vehicle weight rating of more than 8,500 pounds will be treated as a heavy-duty hybrid motor vehicle for purposes of this notice.

(3) *Manufacturer*. (a) *In general*. The "vehicle manufacturer" or "manufacturer" of a heavy-duty hybrid motor vehicle is—

(i) the person engaged in the manufacturing or assembling of the completed heavy-duty hybrid motor vehicle for introduction into commerce; and

(ii) if applicable, any person (other than the person described in section 4(3)(a)(i)) that installs the systems that convert a vehicle powered solely by an internal combustion or heat engine using consumable fuel into the completed heavy-duty hybrid motor vehicle.

(b) For purposes of this section 4(3)—

(i) a "completed heavy-duty hybrid motor vehicle" is a new heavy-duty hybrid motor vehicle that is ready for use and requires no further manufacturing or assembly operations; and

(ii) "introduction into commerce" occurs when a vehicle manufacturer ships a completed motor vehicle from a facility of the manufacturer to a distributor, retailer, or consumer.

(4) *City Fuel Economy*. (a) *In general*. The term "city fuel economy" means the fuel economy measured in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures under 40 C.F.R. Part 600, as in effect on August 8, 2005. A manufacturer may develop and use for this purpose any procedures that the manufacturer reasonably determines to be substantially similar to the procedures under 40 C.F.R. Part 600, as in effect on August 8, 2005. In addition, the Service will not challenge a manufacturer's determination of city fuel economy using any safe harbor measurement method listed in section 4(4)(c) of this notice if that method is consistently used to determine city fuel economy for both the qualified heavy-duty hybrid motor vehicle and the comparable vehicle to which the qualified vehicle's fuel economy is compared in providing the certification under this notice.

(b) *Carry-over models*. The city fuel economy determined under section 4(4)(a) of this notice for a vehicle of a particular make, model, and model year may be used as the city fuel economy for any carry-over model of that vehicle. For this purpose, a vehicle is a carry-over model with respect to a vehicle produced in an earlier model year if the vehicles are of the same make

and model and the design of the model has not changed since such earlier model year.

(c) *Safe harbor measurement methods*. The safe harbor measurement methods listed in this section 4(4)(c) are any of the following:

(i) In the case of heavy-duty hybrid motor vehicles that are medium-duty passenger vehicles, as defined in 40 C.F.R. 600.002–08, measurement in accordance with procedures under 40 C.F.R. Part 600, as in effect on the date the manufacturer's certification is provided.

(ii) In the case of heavy-duty hybrid motor vehicles that are not medium-duty passenger vehicles, as defined in 40 C.F.R. 600.002–08, measurement using the carbon balance method applied to emissions measured using either the procedures in 40 C.F.R. Part 86, Subpart B and 40 C.F.R. § 86.1863–07 or the procedures in the California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-Electric Vehicles in the Urban Bus and Heavy-Duty Vehicle Classes.

(5) *Comparable Vehicle*. (a) *In general*. The term "comparable vehicle" means, for purposes of determining the qualified incremental hybrid cost and the increase in city fuel economy of a qualified heavy-duty hybrid motor vehicle, any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in weight, size, and use to the qualified vehicle. For this purpose—

(i) a vehicle produced by the same manufacturer as the qualified vehicle is comparable in use only if it is manufactured in the same model year as the qualified vehicle; and

(ii) a vehicle produced by a person other than the manufacturer of the qualified vehicle is comparable in use only if it is manufactured in the same 12-month period as the qualified vehicle.

(b) *Manufacturer to choose among multiple comparable vehicles*. If more than one model of vehicle is comparable in weight, size, and use to the qualified vehicle, the manufacturer of the qualified vehicle may choose a vehicle of any model that is comparable in weight, size, or use and treat that vehicle as the comparable vehicle for purposes of providing a certification under this notice.

(6) *Model Year*. The term "model year" means—

(a) the vehicle manufacturer's annual production period (determined under regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*)); or

(b) the calendar year in which the vehicle is manufactured, if the vehicle manufacturer has no annual production period for that make and model of vehicle.

(7) *Total Traction Power*. The term "total traction power" means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if the storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of the storage system.

SECTION 5. MANUFACTURER'S CERTIFICATION.

.01 *When Certification Permitted*. A vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may certify to purchasers that a heavy-duty hybrid motor vehicle of a particular make, model, and model year meets all requirements (other than those listed in section 5.02 of this notice) that must be satisfied to claim the new qualified hybrid motor vehicle credit, and the amount of the credit allowable under § 30B(a)(3) and (d) with respect to the vehicle, if the following requirements are met:

(1) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has submitted to the Service, in accordance with section 6 of this notice, a certification with respect to the vehicle and the certification satisfies the requirements of section 5.03 of this notice; and

(2) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has received an acknowledgment of the certification from the Service.

.02 *Purchaser's Reliance*. Except as provided in section 5.06 of this notice, a purchaser of a heavy-duty hybrid motor vehicle may rely on the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification concerning the vehicle and the amount of the credit allowable with respect to the vehicle (including in cases in which the certification is received after the purchase of the vehicle). The purchaser may claim a credit in the certified amount with respect to the vehicle if the following requirements are satisfied:

(1) The vehicle is placed in service by the taxpayer after December 31, 2005, and is purchased on or before December 31, 2009.

(2) The original use of the vehicle commences with the taxpayer.

(3) The vehicle is acquired for use or lease by the taxpayer, and not for resale.

(4) The vehicle is used predominantly in the United States.

.03 *Content of Certification*. The certification must contain the following information:

(1) The name, address, and taxpayer identification number of the certifying entity;

(2) The make, model, model year, and any other appropriate identifiers of the motor vehicle;

(3) A statement that the vehicle is made by a manufacturer;

(4) The amount of the credit for the vehicle (showing computations);

(5) The manufacturer's suggested retail price for the vehicle;

(6) The manufacturer's suggested retail price for a comparable vehicle;

(7) The make, model, and model year of a comparable vehicle;

(8) The gross vehicle weight rating of the vehicle;

(9) The city fuel economy of the vehicle and evidence that—

(a) the city fuel economy was measured in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures under 40 C.F.R § 600, as in effect on August 5, 2005 (including a description of the procedures used to measure city fuel economy and a description of the manufacturer's basis for reasonably determining that those procedures are substantially similar to the procedures under 40 C.F.R. § 600, as in effect on August 5, 2005); or

(b) a safe harbor measurement method listed in section 4(4)(c) of this notice was consistently used to determine city fuel economy for both the qualified heavy-duty hybrid motor vehicle and the comparable vehicle to which the qualified vehicle's

fuel economy is compared in providing the certification;

(10) A statement that the motor vehicle draws propulsion energy from onboard sources of stored energy that are both an internal combustion or heat engine using consumable fuel, and a rechargeable energy storage system;

(11) Evidence that the maximum power available from the rechargeable energy storage system during a standard 10 second pulse power or equivalent test is—

(a) at least 10 percent of the vehicle's total traction power, in the case of a vehicle that has a gross vehicle weight rating of more than 8,500 pounds and not more than 14,000 pounds, and

(b) at least 15 percent of the vehicle's total traction power, in the case of a vehicle that has a gross vehicle weight rating of more than 14,000 pounds;

(12) The total traction power of the vehicle;

(13) A statement that the vehicle complies with the applicable provisions of the Clean Air Act;

(14) A statement that the vehicle complies with the applicable air quality provisions of state law of each state that has adopted the provisions under a waiver under § 209(b) of the Clean Air Act or a list identifying each state that has adopted applicable air quality provisions with which the vehicle does not comply;

(15) A statement that the vehicle complies with the motor vehicle safety provisions of 49 U.S.C. §§ 30101 through 30169;

(16) A copy of the certificate of conformity under the Clean Air Act certifying the vehicle's internal combustion or heat engine as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy-duty engines or ottocycle heavy-duty engines, as applicable; and

(17) A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

.04 *Multiple manufacturers*. If more than one person is treated as the manufacturer of a vehicle under section 4(3) of this notice, the requirements of section 5.03 of this notice are treated as satisfied if each item of information described in section 5.03(2) through 5.03(16) is provided by one of the manufacturers and each manufacturer providing such information also provides the identifying information described in section 5.03(1) and the declaration described in section 5.03(17).

.05 *Acknowledgment of Certification*. The Service will review the original signed certification and issue an acknowledgment letter to the vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) within 30 days of receipt of the request for certification. This acknowledgment letter will state whether purchasers may rely on the certification.

.06 *Effect of Erroneous Certification*.

(1) *Erroneous Certification*. The acknowledgment that the Service provides for a certification is not a determination that a vehicle qualifies for the credit, or that the amount of the credit is correct. The Service may, upon examination (and after any appropriate consultation with the Department of Transportation or the Environmental Protection Agency), determine that the vehicle is not a new qualified heavy-duty hybrid motor vehicle or that the amount of the credit determined by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to be allowable with respect to the vehicle is incorrect. In either event, the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) right to provide a certification to future purchasers of the heavy-duty hybrid motor vehicles will be withdrawn, and purchasers who acquire a vehicle after the date on which the Service publishes an announcement of the withdrawal may not rely on the certification. Purchasers may continue to rely on the certification for vehicles they acquired on or before the date on which the announcement of the withdrawal is published (including in cases in which the vehicle is not placed in service and the credit is not claimed until after that date), and the Service will not attempt to collect any understatement of tax liability attributable to such reliance. Manufacturers (or, in the case of foreign vehicle manufacturers, their domestic distributors) are reminded that an erroneous certification may result in the imposition of penalties:

(a) under § 7206 for fraud and making false statements; and

(b) under § 6701 for aiding and abetting an understatement of tax liability in the amount of $1,000 ($10,000 in the case of understatements by corporations) per return on which a credit is claimed in reliance on the certification).

SECTION 6. TIME AND ADDRESS FOR FILING CERTIFICATION.

.01 *Time for Filing Certification*. In order for a certification under section 5 of this notice to be effective for new qualified heavy-duty hybrid motor vehicles placed in service during a calendar year beginning after December 31, 2006, the certification must be received by the Service not later than December 31st of that calendar year. For new qualified heavy-duty hybrid motor vehicles placed in service during 2006, the certification must be received by the Service not later than December 31, 2007.

.02 *Address for Filing*. Certifications under section 5 of this notice must be sent to:

Internal Revenue Service,
Industry Director, Large and
Mid-Size Business, Heavy
Manufacturing and Transportation,
Metro Park Office Complex — LMSB,
111 Wood Avenue, South,
Iselin, New Jersey 08830.

SECTION 7. PAPERWORK REDUCTION ACT.

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2060.

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

The collections of information in this notice are in section 5. This information is required to be collected and retained in

order to ensure that vehicles meet the requirements for the new qualified hybrid motor vehicle credit under § 30B(a)(3) and (d). This information will be used to determine whether the vehicle for which the credit is claimed by a taxpayer is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 240 hours.

The estimated annual burden per respondent varies from 35 hours to 45 hours, depending on individual circumstances, with an estimated average burden of 40 hours to complete the certification required under this notice. The estimated number of respondents is 6.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION.

The principal author of this notice is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Cimino at (202) 622–3120 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 199; 1.199–1 through 1.199–9, 1.199–3T, 1.199–5T, 1.199–7T, 1.199–8T.)

Rev. Proc. 2007–34

SECTION 1. PURPOSE

Section 199 of the Internal Revenue Code provides a deduction for income attributable to domestic production activities. This revenue procedure specifies the conditions under which certain partnerships and S corporations may choose to calculate qualified production activities income (QPAI) and W–2 wages as defined by § 1.199–2T(e)(2) of the temporary Income Tax Regulations (W–2 wages) at the entity level, as well as the manner for allocating and reporting QPAI and W–2 wages to partners or shareholders.

SECTION 2. BACKGROUND

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent for taxable years beginning in 2005 or 2006, and 6 percent for taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) the QPAI of the taxpayer for the taxable year, or (B) taxable income (determined without regard to § 199) for the taxable year (or, for an individual, adjusted gross income).

Section 199(b)(1) limits the deduction for a taxable year to 50 percent of the W–2 wages paid by the taxpayer for the taxable year. For this purpose, § 199(b)(2)(A) defines the term W–2 wages to mean, with respect to any person for any taxable year of such person, the sum of the amounts described in § 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

Section 199(c)(1) defines QPAI for any taxable year as an amount equal to the excess, if any, of the taxpayer's domestic production gross receipts (DPGR) over the sum of the cost of goods sold (CGS) allocable to DPGR and other expenses, losses, or deductions (other than the deduction allowed by § 199) (deductions) that are properly allocable to such receipts. Section 1.199–4(b) of the Income Tax Regulations provides rules for determining CGS allocable to DPGR. Section 1.199–4(c) provides rules for determining the deductions that are properly allocable to DPGR or to gross income attributable to DPGR. Section 1.199–4(a) and (d) provides that a taxpayer generally must allocate and apportion its deductions using the § 861 method, as determined under the rules of §§ 1.861–8 through 1.861–17 and §§ 1.861–8T through 1.861–14T, subject to the rules in § 1.199–4(d). Section 1.199–4(e) provides that an eligible taxpayer may use the simplified deduction method to apportion deductions between DPGR and non-DPGR. Section 1.199–4(f) provides that a qualifying small taxpayer may use the small business simplified overall method to apportion CGS and deductions between DPGR and non-DPGR.

Section 199(d)(1) provides special rules for applying § 199 to pass-thru entities. Section 199(d)(1)(A) provides that (i) § 199 shall be applied at the partner or shareholder level, (ii) each partner or shareholder shall take into account such person's allocable share of each item described in § 199(c)(1)(A) or (B) (determined without regard to whether the items described in § 199(c)(1)(A) exceed the items described in § 199(c)(1)(B)), and (iii) each partner or shareholder shall be treated for purposes of § 199(b) as having W–2 wages for the taxable year in an amount equal to such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).

Section 199(d)(1)(C) provides that the Secretary may prescribe rules requiring or restricting the allocation of items and wages under § 199(d)(1) and may prescribe such reporting requirements as the Secretary determines appropriate.

For taxable years beginning after May 17, 2006, § 1.199–2T(e)(2) provides that the term W–2 wages includes amounts described in § 1.199–2(e)(1) (paragraph (e)(1) wages) that are properly allocable to DPGR for purposes of § 199(c)(1). Under § 1.199–2(e)(1), paragraph (e)(1) wages with respect to any person for any taxable year of such person, means the sum of the amounts described in § 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

Section 1.199–5T(b)(1)(ii) and (c)(1)(ii) provides that the Secretary may, by publication in the Internal Revenue Bulletin, permit a partnership or S corporation to calculate a partner's or shareholder's share of QPAI and W–2 wages at the entity level, instead of allocating to that partner or shareholder its share of the entity's items and paragraph (e)(1) wages for determining the § 199 deduction at the partner or shareholder level. If a partnership or S corporation does calculate QPAI and W–2 wages at the entity level, such an entity then allocates to each partner or shareholder its share of QPAI (subject to the limitations of § 1.199–5T(b)(2) and (c)(2)) (which may be less than zero) and