Part III. Administrative, Procedural, and Miscellaneous

New Qualified Plug-in Electric Drive Motor Vehicle Credit

Notice 2009–89

Section 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified plug-in electric drive motor vehicle credit under § 30D of the Internal Revenue Code, as in effect for vehicles acquired after December 31, 2009. 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 motor vehicle of a particular make, model, and model year meets certain requirements that must be satisfied to claim the new qualified plug-in electric drive motor vehicle credit under § 30D; and

(2) The amount of the credit allowable with respect to that motor vehicle.

This notice also provides guidance to taxpayers who purchase motor 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 30D originally was enacted in the Energy Improvement and Extension Act of 2008, Pub. L. 110–343, 122 Stat. 3765. The American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 115 ("the Act"), amended § 30D in certain material respects, effective for vehicles acquired after December 31, 2009. This notice provides guidance regarding the credit under § 30D for qualified plug-in electric drive motor vehicles acquired after December 31, 2009. All references to § 30D in subsequent sections of this notice are to the provision as amended by the Act. Guidance regarding the credit under § 30D for qualified plug-in electric drive motor vehicles acquired before January 1, 2010, is provided in Notice 2009–54, 2009–26 I.R.B. 1124. This notice also amplifies Notice 2009–54 and Notice 2009–58, 2009–30 I.R.B. 163 (relating to the plug-in electric vehicle credit under § 30) to provide that a vehicle is considered "acquired" when title to that vehicle passes under state law.

Section 2. BACKGROUND

Section 30D provides for a credit for certain new qualified plug-in electric drive motor vehicles. The credit is equal to the sum of: (1) $2,500, plus (2) for a vehicle which draws propulsion energy from a battery with at least 5 kilowatt hours of capacity, $417, plus an additional $417 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours. Under § 30D(b)(3), that portion of the credit determined by battery capacity cannot exceed $5,000. Therefore, the total amount of the credit allowed for a vehicle is limited to $7,500. The new qualified plug-in electric drive motor vehicle credit phases out for a manufacturer's vehicles over the one-year period beginning with the second calendar quarter after the calendar quarter in which at least 200,000 qualifying vehicles manufactured by that manufacturer have been sold for use in the United States (determined on a cumulative basis for sales after December 31, 2009) ("phase-out period"). Qualifying vehicles manufactured by that manufacturer are eligible for 50 percent of the credit if acquired in the first two quarters of the phase-out period and 25 percent of the credit if acquired in the third or fourth quarter of the phase-out period. Vehicles manufactured by that manufacturer are not eligible for a credit if acquired after the phase-out period. After December 31, 2009, a vehicle that qualifies for a credit under § 30 does not qualify for the credit under § 30D.

Section 3. SCOPE OF NOTICE

The new qualified plug-in electric drive motor vehicle credit determined under this notice applies to plug-in electric drive motor vehicles that—

(1) Are placed in service by the taxpayer in a taxable year beginning after December 31, 2009;

(2) Are acquired by the taxpayer after December 31, 2009; and

(3) Otherwise meet the requirements of § 30D.

Section 4. MEANING OF TERMS

The following definitions apply for purposes of this notice:

.01 *In General*. Terms used in this notice and not defined in this section 4 have the same meaning as when used in § 30D.

.02 *Clean Air Act Regulations*. The Clean Air Act regulations are the 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.*).

.03 *Battery Capacity*. Battery capacity is the quantity of electricity that a battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a zero percent state of charge.

.04 *Motor Vehicle*. The term "motor vehicle" means any vehicle that is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels. For purposes of this notice, the term "motor vehicle" does not include a low-speed vehicle within the meaning of section 571.3 of Title 49 of the Code of Federal Regulations, or a vehicle that is manufactured primarily for off-road use, such as primarily for use on a golf course.

.05 *Manufacturer*. The term "manufacturer" has the meaning given that term in the Clean Air Act regulations.

.06 *Model Year*. The term "model year" means the model year determined under the Clean Air Act regulations (see 40 CFR § 86–082–2).

.07 *Acquired*. A vehicle is not "acquired" before the date on which title to that vehicle passes under state law.

Section 5. MANUFACTURER'S CERTIFICATION AND QUARTERLY REPORTS

.01 *When Certification Permitted*. A vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domes-

tic distributor) may certify to purchasers that a 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 plug-in electric drive motor vehicle credit allowable under § 30D 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 this section 5, 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 and the acknowledgment states that purchasers may rely on the certification.

.02 *Purchaser's Reliance*. Except as provided in section 5.07 of this notice, a purchaser of a 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 in a taxable year beginning after December 31, 2009, and is acquired by the taxpayer after 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; and

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

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

(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) A statement that the vehicle is treated as a motor vehicle for purposes of Title II of the Clean Air Act.

(5) The amount of the credit for the vehicle (showing computations).

(6) The gross vehicle weight rating of the vehicle.

(7) A statement that the motor vehicle is propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 4 kilowatt hours.

(8) The number of kilowatt hours if any, in excess of 4 kilowatt hours.

(9) A statement that the battery is capable of being recharged from an external source of electricity.

(10) A statement that the vehicle has at least four wheels.

(11) A statement that the vehicle is not a low-speed vehicle within the meaning of section 571.3 of Title 49 of the Code of Federal Regulations.

(12) A statement that the vehicle is manufactured primarily for use on public streets, roads and highways.

(13) A statement that the vehicle is not manufactured primarily for off-road use, such as primarily for use on a golf course.

(14) A statement that the vehicle complies with the applicable provisions of the Clean Air Act.

(15) 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.

(16) A description of the motor vehicle safety provisions of 49 U.S.C. §§ 30101 through 30169 applicable to the vehicle and a statement that the vehicle complies with those provisions.

(17) A declaration, applicable to the certification, statements, 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 *Acknowledgement 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.

.05 *Quarterly Reporting of Sales of Qualified Vehicles*. A manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) that has received an acknowledgment of its certification from the Service must submit to the Service, in accordance with section 6 of this notice, a report of the number of qualified plug-in electric drive motor vehicles sold by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to consumers or retail dealers during the calendar quarter. The quarterly report must contain the following:

(1) The name, address, and taxpayer identification number of the reporting entity.

(2) The number of qualified vehicles sold by the reporting entity to consumers or retail dealers during the calendar quarter.

(3) The make, model, model year, and any other appropriate identifiers of the qualified vehicles sold during the calendar quarter.

(4) A declaration, applicable to the quarterly report 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 report, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this report are true, correct, and complete."

.06 *Acknowledgment of Quarterly Report*. The Service will review the original signed quarterly report 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 report. This acknowledgment letter will state whether purchasers may continue to rely on the certification.

.07 *Effect of Erroneous Certification, Erroneous Quarterly Reports, or Failure to Make Timely Quarterly Reports*.

(1) *Erroneous Certification or Quarterly Report*. 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 plug-in electric drive 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, or in the event that the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) makes an erroneous quarterly report, 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 new qualified plug-in electric drive 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 or an erroneous quarterly report may result in the imposition of penalties, including, but not limited to, the 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.

(2) *Failure to Make Timely Quarterly Report*. If a manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) fails to make a quarterly report in accordance with section 5.05 of this notice and at the time specified in section 6.02 of this notice, the acknowledgment letter issued under section 5.04 of this notice may be withdrawn, and purchasers will not be entitled to rely on the related certification for quarters beginning after the date on which the Service publishes an announcement of the withdrawal (generally, quarters beginning after the due date of the report). If the quarterly report is filed subsequently, the Service may reissue the acknowledgment letter and retract the withdrawal announcement.

Section 6. TIME AND ADDRESS FOR FILING CERTIFICATION AND QUARTERLY REPORTS

.01 *Time for Filing Certification*. In order for a certification under section 5 of this notice to be effective for new qualified plug-in electric drive motor vehicles placed in service during a calendar year, the certification must be received by the Service not later than December 31 of that calendar year.

.02 *Time for Filing Quarterly Reports*. A report of sales of qualified vehicles during a quarter must be filed with the Service at the address specified in section 6.03 of this notice not later than the last day of the first calendar month following the quarter to which the report relates.

.03 *Address for Filing*. Certifications and quarterly reports under section 5 of this notice must be sent to:

Internal Revenue Service
Industry Director, LMSB, Heavy Manufacturing & 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 1545–2137.

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 sections 5 and 6. This information is collected and retained in order to ensure that vehicles meet the requirements for the new qualified plug-in electric drive motor vehicle credit under § 30D. 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 voluntary to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 280 hours.

The estimated annual burden per respondent varies from 20 hours to 35 hours, depending on individual circumstances, with an estimated average burden of 24 hours to complete the certification required under this notice. The estimated number of respondents is 12.

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. DATE OF APPLICABILITY

This notice is applicable to plug-in electric drive motor vehicles acquired (within the meaning of section 4.07 of this notice) after December 31, 2009.

Section 9. EFFECT ON OTHER DOCUMENTS

Notice 2009–54, 2009–26 I.R.B. 1124, is amplified by adding the following sentence to section 4:

.09 *Acquired*. A vehicle is not "acquired" before the date on which title to that vehicle passes under state law.

Notice 2009–58, 2009–30 I.R.B. 163, is amplified by adding the following sentence to section 4:

.06 *Acquired*. A vehicle is not "acquired" before the date on which title to that vehicle passes under state law.

Notice 2009–54 is superseded, effective for plug-in electric drive motor vehicles acquired after December 31, 2009.

Section 10. DRAFTING INFORMATION

The principal author of this notice is Patrick S. Kirwan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Kirwan at (202) 622–3110 (not a toll-free call).

Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States

Notice 2009–91

I. PURPOSE

This notice modifies the rules in Notice 2005–76, 2005–2 C.B. 947, for determining the amount of income tax employers must withhold under section 3402 of the Internal Revenue Code (Code) from wages paid for services performed by nonresident alien employees within the United States. The modification is effective with respect to wages paid on or after January 1, 2010.

Notice 2005–76 provides rules for determining the amount of withholding on wages paid to nonresident alien employees. These rules need to be modified to reflect changes made in the withholding tables as a result of the enactment of section 36A of the Code (the "Making Work Pay Tax Credit") in the American Recovery and Reinvestment Act of 2009 (Public Law No. 111–5) (ARRA). Nonresident alien individuals are not eligible for the Making Work Pay Tax Credit under section 36A. The modified rules provide for withholding on the wages of nonresident alien employees that more closely approximates their income tax liability.

II. BACKGROUND

A. Income Tax Withholding on Wages of Nonresident Alien Employees

Generally, employers are liable for the withholding of income tax on remuneration for services performed within the United States by a nonresident alien employee. Section 3402(a)(1) of the Code provides that, except as otherwise provided in section 3402, every employer making a payment of wages shall deduct and withhold from such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Section 3402(a)(1) further provides that any tables or procedures prescribed under section 3402(a)(1) shall be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be appropriate to carry out the purposes of chapter 1 (imposition of individual income tax).

Income tax withholding tables in Publication 15, *(Circular E) Employer's Tax Guide*, for use with the percentage and wage bracket methods of withholding, are based on the assumption that the employee receiving the wages is entitled to a standard deduction in determining his or her income tax liability. However, in the case of a nonresident alien individual, section 63(c)(6)(B) provides that the standard deduction shall be zero. Notice 2005–76 addresses this difference in treatment by directing an employer to add an amount to the wages of a nonresident alien employee solely for purposes of calculating the income tax withholding for each payroll period.

B. Making Work Pay Tax Credit

Section 36A, which was added to the Code by the ARRA, provides a credit against income tax to an eligible individual in an amount equal to the lesser of (1) 6.2 percent of earned income, or (2) $400 ($800 in the case of a joint return). The credit is reduced or completely eliminated for individuals with modified adjusted gross income exceeding threshold amounts. Section 36A(d)(1)(A)(i) provides that an eligible individual for purposes of section 36A does not include a nonresident alien individual. As currently enacted, the Making Work Pay Tax Credit does not apply to taxable years beginning after December 31, 2010. *See* section 36A(e). Under the ARRA, taxpayers' reduced tax liability under the provision is expeditiously implemented through revised income tax withholding. *See* H.R. Conf. Rep. 111–16, 111th Cong., 1st Sess. (2009) at 517. Accordingly, the income tax withholding tables have been revised to take the Making Work Pay Tax Credit into account in determining the amount of income tax to be withheld.

C. Reason for Change to Withholding Procedures for Nonresident Alien Employees

The income tax withholding tables reflect two tax benefits for which nonresident alien employees are not eligible: (1) the standard deduction; and (2) the Making Work Pay Tax Credit. If adjustments from the generally applicable procedures for using the income tax withholding tables are not made in determining income tax withholding for nonresident alien employees, the withholding on the wages of such employees will generally be less than their tax liability. This notice modifies the rules for employers to use in calculating income tax withholding on nonresident alien employees to offset the effects of both the standard deduction and Making Work Pay Tax Credit as assumed under the withholding tables.

The modification applies only to the procedure used by employers in calculating income tax withholding on wages paid to nonresident alien employees as set forth in part III.B. of Notice 2005–76. The requirements in Notice 2005–76 (part III.A.) relating to the completion of Form W–4, *Employee's Withholding Allowance Certificate*, by nonresident alien employees, continue in effect.

III. WITHHOLDING RULES THAT WILL BE IN EFFECT FOR NONRESIDENT ALIEN EMPLOYEES ON OR AFTER JANUARY 1, 2010

Beginning with wages paid on or after January 1, 2010, employers are required to calculate income tax withholding under section 3402 of the Code on wages of nonresident alien employees by making two modifications rather than the one modification described in Notice 2005–76 (part III.B). First, employers need to add an amount to wages before determining withholding under the wage bracket or percentage method in order to offset the standard deduction built into the withholding tables. Second, employers need to determine an additional amount of withholding from a separate table applicable only to nonresident alien employees to offset the effect of