Inflation Reduction Act EV Incentive Updates – May 2023

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IRA Went into Effect with Rule-making Still a Work in Progress

The most challenging part of the rule-making has to do with the rules around battery minerals. The IRA requires a minimum percentage (40% in 2023) of battery critical minerals be sourced either domestically or with a free-trade partner. The IRS is still accepting comments, through June 16th. The EV Club is working with the Electric Vehicle Association (EVA) and the Clean Vehicle Coalition (CVC). Our primary input on this is that manufacturers should certify compliance on a model-year basis since that is how they plan their manufacturing and that is how consumers think about cars. Furthermore, once a model/model year is certified, it should be the manufacturer’s responsibility to ensure compliance. And if compliance isn’t achieved, the manufacturer would be responsible for the resultant tax liability. Let’s keep consumers out of the VIN-checking business and definitely out of exposure uncertainty.

IRS Flexibility

The certification question notwithstanding, what we are hearing is that the manufacturers are generally pleased with IRS rule-making. They expanded the list of free trade partners. They are allowing the OEMs to self-certify and they have 3 options for doing so: point in time, individual vehicle, or average over a defined period of time (year, quarter, month). We are trying to find out the limits of the self-certification and whether there is exposure for the consumer. More to come on this.

What the OEMs are most concerned about is when the foreign entities of concern rule kicks in. They have not figured out how to get China completely out of the equation.

Used Teslas

If anyone has looked at the fueleconomy.gov page to view the makes that are eligible for the *used* EV incentive, you will see that Tesla is conspicuously omitted. We have been advised that the reason is that the Tesla paperwork is churning slowly through the wheels of the IRS bureaucracy. Tesla is trying to get it unstuck. We expect that to happen reasonably soon.

Leasing

Leasing has emerged as a big loophole. The IRS has ruled that consumer leases are commercial transactions and not subject to any of the restrictions associated with a consumer purchase. All leased vehicles, no matter where the battery comes from, no matter how high the MSRP or the lessee's income, are incentive-eligible. However, it is our understanding that Tesla, General Motors, and Ford are not passing through the incentives for leasing customers at this time. They are not legally required to do so, but it is not consumer-friendly in our view. If any reader has different information, please let us know.

Transfer Provision

This begins in 2024. The consumer will have the option of transferring the incentive, which is a tax credit, to the seller, who then gives the incentive to the consumer as a rebate. That sounds complicated but it boils down to the incentive becoming cash on the hood, so it's unequivocally a good thing. Not only does the consumer not have to wait for their taxes to be filed, but for people who don’t have enough tax liability to burn off a tax credit, this will enable them to use the incentive. So, this is an important equity provision. Unlike with a lease, a transfer has to be passed to the consumer. You may ask what happens if the consumer seeks to use the transfer when leasing a vehicle? Good question. To be continued.

Joint Ventures

Could joint ventures be a way to skirt the foreign entity of concern rules? Another good question. Ford announced a joint venture with the big Chinese battery manufacturer, CATL, to build a plant in Michigan. Our understanding is that it is likely that the output of this plant will be incentive-eligible because Ford owns the plant and is licensing IP to make LFP batteries from CATL. Still, we await a final ruling.