What The Consumer Needs To Know About The New Battery Rules

Photo above: Ford expects its Mustang Mach-E to qualify for half the incentive; Chevy expects the same for its Bolt.

Battery Rules Issued

January 1 came and went. The new federal incentives in the Inflation Reduction Act became law but the implementing agency, the IRS, had not completed rule-making for several portions of it, most particularly how manufacturers can be in compliance with the new rules for sourcing and refining of critical minerals and battery assembly. The IRS said it needed until March. True to its word, the rules were issued on March 31 and take effect April 18th. This interim period allows manufacturers to determine which vehicles will be eligible and whether the certification will be for the full $7500 credit or only half.

Consumers have gotten a benefit from this delay as more vehicles were temporarily eligible. Many vehicles are expected to lose incentives due the rules. If you have cash burning a hole in your pocket and are in the market, you can still move fast and pick up an EV with the full incentive applied (assuming the other criteria are met). But you have to take possession of it before April 18th. The incentives are applied, in IRS speak, at the “date placed in service.”

What Rules Apply

The rule-making itself is highly technical in nature. The law requires that 40% of the sourcing and refining of critical battery minerals occur either domestically or with a free-trade partner and that 50% of battery assembly takes place in North America during 2023. Going forward, these levels escalate. So, how do you define 40%/50%? The IRS has determined that it is to be based on value. So how does one define value? What is the legal definition of a free-trade partner? (The ink is still wet on some frantic dealmaking that happened so that some friendly nations, e.g. Japan and South Korea, could officially become free trade partners.)

We'll know on April 17th what vehicles are eligible for how much of the incentive, but it will be a continually evolving list as manufacturers wrangle supply chain logistics and as the requirements escalate. It is possible that a vehicle eligible in one year loses eligibility in a subsequent year if the supply chain has not maintained pace with the requirements. And it has to be done in an environment of (presumably) a rapid ramping up of production volume. This article from Reuters includes statements by some manufacturers regarding which vehicles stand to lose incentives. This is the Department of Energy page that lists qualifying vehicles. It will be updated on April 17th.

Making Sure the Vehicle is Incentive-Eligible

It certainly helps if a manufacturer certifies that a given vehicle is incentive-eligible. But the IRS is officially determining eligibility based on the VIN. This is a new world we're about to enter, and with all that is being written in the press about how these incentives work, there hasn't been much discussion of this potential for a consumer to be left in the lurch.

It is possible that two of the same make/model/model year vehicles have different incentive statuses, based on when and where the manufacturing and delivery take place. When filing for the tax credit, the VIN is required and Treasury matches it to its records. It is advisable to check the VIN before buying the vehicle. That can be a hassle, as for a made to order vehicle, the VIN isn't available until late in the game.

The EV Club, in partnership with the Electric Vehicle Association, recommended that the IRS use make/model/model year and deal with it at the manufacturer level. Our take is that asking consumers to be in the VIN checking business is a clunky way to go. It could cause an unpleasant surprise. It definitely fosters confusion.

For readers of this blog, if you buy an EV after the new rules are in effect, we are interested in hearing about the process and if you felt protected if you were promised an incentive.

Leasing

For those who lease, none of the rules apply, not even North American final assembly. The full incentive applies. Just remember, the finance company gets the incentive. It is up to the consumer to verify it is being passed along, which is not legally required. It is called a subvented lease.

Other Rule-making

Yes, there's more, particularly the foreign entities of concern rule and the transfer.

Foreign Entities of Concern

The foreign entities of concern rule, which will phase in during 2024 and 2025, will likely include several countries, but is really all about China, which currently dominates the battery mineral supply-chain and has a lot of battery IP. What about Chinese investments in this country? Ford recently announced a joint venture with the big Chinese battery company, CATL, to build a plant in Michigan to manufacture LFP (Lithium Iron Phosphate) batteries. Does this comport with the law? In this case, Ford is banking on the fact that it is only the IP that comes from CATL and that the plant is owned by Ford. This is an article in Politico that discusses it in some detail but stops short of making a definitive statement. Stay tuned.

Transfer Provision

The transfer provision kicks in as of Jan 1, 2024. This year, the incentive is a tax credit. There are two drawbacks to tax credits. The first is that you have to wait until you file your taxes to get the incentive. The other is that you need to have the tax liability to burn it off. The transfer provision allows the consumer to transfer the incentive to the dealer or manufacturer and take the credit as a “cash on the hood” rebate. Unlike with a lease, the law requires the dealer to transfer the full amount of the credit to the consumer. That solves the timing problem. But what about if the consumer doesn’t have $7500 of tax liability? Could there be a claw-back? That seems unlikely. The intent of the transfer provision is, in part, to be an equity measure, so people without tax liability could take advantage of the incentive.