



March 17, 2025

The Honorable Scott Bessent
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**Re Request for Comments on the Section 45W Credit for Qualified Commercial
Clean Vehicles (IRS REG-123525-23)**

Dear Secretary Bessent:

On January 10, 2025 the U.S. Department of the Treasury (“Treasury”) published a notice of proposed rule making (the “NPRM”) with guidance on the qualified commercial clean vehicle credit enacted by the Inflation Reduction Act of 2022 (the “IRA”) under section 45W of the Internal Revenue Code (the “Code”).¹ The Equipment Leasing and Finance Association (“ELFA”) welcomes the request for public comment from Treasury under the NPRM.

The Equipment Leasing and Finance Association (ELFA) proudly represents the companies that power a dynamic \$1 trillion equipment finance sector. Our members drive innovation, enable businesses to access essential capital equipment, and foster economic growth across the United States and beyond. With nearly 600 member companies, our diverse community includes independent and captive leasing and finance companies, banks, financial services corporations, brokers, investment banks, manufacturers, and service providers. Together, they finance the acquisition of equipment and software critical to industries ranging from agriculture and technology to healthcare, transportation, and construction.

Whether it’s agricultural machinery, state-of-the-art medical technology, or the trucks and rail cars that keep goods moving across America, ELFA members are the backbone of the economy. By providing tailored financing solutions, our industry doesn’t just fuel capital formation—it fuels jobs, innovation, and global competitiveness.

We note with gratitude that Treasury has shown continued commitment to providing guidance for taxpayers regarding the qualified commercial clean vehicle credit under Section 45W. Specifically, we note that on November 3, 2022, Treasury published Notice 2022-56, 2022-47 I.R.B. 480, seeking comments regarding general application of Sections 45W and 30C as well as comments regarding specific questions raised by Treasury. In addition, we appreciate that Treasury published several Revenue Procedures throughout 2022 and 2023 providing guidance on specific aspects of Section 45W including guidance for qualified manufacturers to

¹ Unless otherwise indicated, all references to “Section” or “Sections” herein are to the Internal Revenue Code of 1986, as amended as of the date hereof (the “Code”), and all references to “Treasury Regulations Section” are to regulations issued by Treasury, as most recently adopted or amended as of the date hereof.

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 for credits under these sections. Furthermore, we note that Treasury issued safe harbor notices in 2023 and 2024 regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar years 2023 and 2024. In each of these processes Treasury sought comments regarding guidance, which generated numerous comments that we believe have been carefully considered in the preparation of the NPRM.

ELFA commends Treasury for their continued commitment to providing guidance for taxpayers and for its responsiveness to comments received throughout this regulatory process. In response to the latest request for additional comments in the NPRM, we make the following recommendations for guidance to clarify certain provisions of Section 45W.

I. Summary

Guidance should provide the following clarifications with regard to the new recapture provisions for qualified commercial clean vehicles under Section 45W.

- Revise the proposed effectiveness date of Proposed Treasury Regulations Section 1.45W-4, so that it applies to qualified commercial clean vehicles placed in service in taxable years beginning after the date of publication of the final regulations in the Federal Register.
- Shorten the length of time during which a qualified commercial clean vehicle must be used in a trade or business from 18 months to 12 months, which is the industry standard minimum lease term in commercial fleet leasing.
- Provide an exception to recapture rules to exempt from recapture a Section 45W credit for a vehicle that does not meet the recapture length of time requirement due to a casualty loss.

II. Discussion

The IRA added new Section 45W, which allows a taxpayer to claim a tax credit for purchasing and placing in service a qualified commercial clean vehicle. The amount of the credit under Section 45W is the lesser of (1) 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 (2) the incremental cost of the vehicle. Under Section 45W(b)(4), the 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. The definition of a "qualified commercial clean vehicle" under Section 45W(c) includes "mobile machinery" and Section 45W(e) provides that no credit is allowed under Section 45W with respect to any vehicle unless the taxpayer includes the vehicle identification number (VIN) of such vehicle on the tax return for the taxable year. Section 45W(f) grants Treasury and the IRS authority to issue regulations or other guidance to carry out the purposes of Section 45W.

Section 30D(f)(5), which is incorporated in section 45W(d)(1), authorizes Treasury to provide for recapturing the benefit of any section 45W credit allowable with respect to any property which ceases to be property eligible for such credit. Proposed Treasury Regulations Section 1.45W-4(c)(2)(i) would provide that if a taxpayer ceases to use the vehicle for 100 percent trade or business use during the 18-month period beginning on the date the vehicle is placed in service, including because the vehicle is sold or otherwise disposed of, including by reason of a casualty event, then the taxpayer may not claim the section 45W credit with respect to the vehicle, and if the taxpayer has already claimed the credit, the credit is recaptured. We recommend that Treasury and the IRS provide the following clarifications with regard to the recapture rules of the credit for qualified commercial clean vehicles under Section 45W.

1. *Effective Date*

Treasury should revise the proposed effectiveness date of Proposed Treasury Regulations Section 1.45W-4, so that it applies to qualified commercial clean vehicles placed in service in taxable years beginning after the date of publication of the final regulations in the Federal Register. For example, if the final regulations are published in 2025, Proposed Treasury Regulations Section 1.45W-4 should apply to commercial clean vehicles placed in service in 2026 and later.

Proposed Treasury Regulations Section 1.45W-4(c) sets forth an 18-month recapture rule, and Proposed Treasury Regulations Section 1.45W-4(f) states: “*This section applies to taxable years ending after [date of publication of the final regulations in the Federal Register].*” If Proposed Treasury Regulations Section 1.45W-4 is construed to take effect beginning in the tax year final regulations are published, then it would apply retroactively to any lease or other commercial arrangement that was entered into prior to January 1st of the final regulations’ publication year. Such a retroactive application to preexisting commercial arrangements will cause significant and relatively arbitrary economic losses. Instead, Proposed Treasury Regulations Section 1.45W-4 should apply to clean vehicles placed in service after the tax year of publication of final regulations.

The following examples illustrate some hardships that taxpayers may face if the effective date proposed in Proposed Treasury Regulations Section 1.45W-4(c) is not amended.

Example #1:

Many states distinguish a vehicle lease from a rental for sales tax purposes based on the minimum term of the contract, which is often set at one year by statute or state rulemaking. Accordingly, **the standard minimum lease term in the commercial fleet vehicle leasing business is one year.** Therefore, in this example we assume that a clean vehicle was leased on an industry standard one year term on or after January 2024, and per industry convention, the clean vehicle is sold at wholesale auction after its lease term ends.

If Proposed Treasury Regulations Section 1.45W-4(c) were to take effect in the tax year of publication of final regulations and the final regulations are published in 2025, the lessee or lessor would be subject to a commercially retroactive recapture despite

engaging in a standard leasing transaction. However, this adverse outcome can be avoided if the effective date of the rules of Proposed Treasury Regulations Section 1.45W-4 were to be based on a clean vehicle's placed in service date and after final regulations are published.

Example #2:

A taxpayer purchases a clean vehicle in March 2024, which is subsequently involved in an accident on January 1, 2025. The taxpayer business sells the vehicle rather than repair it because it determines that the cost to repair the clean vehicle is roughly equal to its post-repair value.

If the rules of Proposed Treasury Regulations Section 1.45W-4(c) are effective in the tax year of publication of final regulations and the final regulations are published in 2025, the taxpayer would be subject to a commercially retroactive recapture without any notice of that risk. Had the taxpayer known at the time of the accident that it would be subject to a retroactive recapture it might have decided to repair rather than auction the clean vehicle so as to continue using the clean vehicle to avoid the recapture.

As we note below, we believe that Treasury should add an exception to the recapture rules to exempt from recapture a Section 45W credit for a vehicle that does not meet the recapture length of time requirement due to a casualty loss. And, similar to Example #1, we believe that Treasury should avoid adverse retroactive application outcomes by amending the effective date of Proposed Treasury Regulations Section 1.45W-4 to apply only to clean vehicles placed in service date after the tax year of publication of final regulations.

Applying this recommended approach will provide taxpayers with greater certainty and afford them sufficient time to take any steps necessary to ensure they are able to comply with the final regulations. This recommended approach is also consistent with past precedent for having final regulations apply to property placed in service after the date of publication of the final regulations in the Federal Register. For example, the final regulations related to the Section 48 energy credit specified that Treasury Regulations Section 1.48-13 applies to energy projects placed in service in taxable years ending on or after December 12, 2024 (the date of publication of the final rule), *and the construction of which begins after December 12, 2024*. This effective date formulation ensured a reasonable consideration of commercial arrangements which predate the publication of regulations.

2. *Duration of Recapture Period*

The Treasury Department and the IRS should consider shortening the length of time during which a qualified commercial clean vehicle must be used in a trade or business from 18 months to 12 months, which is the industry standard minimum lease term in commercial fleet leasing, as discussed above.

Although the summary section in the NPRM notes that the Treasury Department and the IRS considered commercial vehicle leasing practices in arriving at 18 months for the recapture period, this length of time is not standard in the leasing industry. Most commercial leases, utilized by large and small companies alike, feature a terminal rental adjustment clause (in accordance with Section 7701(h)(1)), a “TRAC lease”), and the vast majority of TRAC leases feature a minimum lease term of 12 months, not 18 months. As noted previously, many states distinguish a vehicle lease from a rental for sales tax purposes based on the minimum term of the contract, which is often set at one year by statute or state rulemaking. Accordingly, **the standard minimum lease term in the commercial fleet vehicle leasing business is one year.** Shortening the recapture period in the final regulations to 12 months would align with standard commercial vehicle leasing practices.

The proposed 18-month recapture rule also deviates from recapture rules for the Section 30D tax credit for new clean vehicles, which, as with the Section 45W tax credit, can be claimed by businesses.² Section 30D provides for the recapture of that credit if a sale is cancelled or if a new clean vehicle is returned or sold within 30 days, but they do not otherwise provide for recapture upon a later sale or other disposition of the clean vehicle (see Treasury Regulations Section 1.30D-4(e)). This raises the question of why a much longer and broader recapture rule for the Section 45W tax credit is necessary and whether the recapture timeframes between Section 30D and Section 45W should be aligned.

3. *Recapture for Casualty*

Most commercial vehicles are used at least five days per week and are on the road for many hours per day. In their daily use they are exposed to many hazards that, through no fault of the business or driver, may render the vehicle inoperable or a total loss. We believe that it is for this reason that historic proposals regarding recapture of elective vehicle credits did not include recapture for casualty. Specifically, when Treasury issued proposed regulations under Section 30(d) in 1994, the recapture provisions of the proposed regulations incorporated rules under Section 30(d) and the legislative history to provide that recapture occurs if, at any time within three years after the date the property is placed in service, the vehicle is modified so that it may no longer be primarily powered by electricity or is used in a manner described in section 50(b) (for example, used predominately outside the United States). Generally, no recapture would occur on a sale or other disposition (including a disposition because of an accident or other casualty) of a qualified electric vehicle.

We believe that Treasury should add an exception to recapture rules to exempt from recapture a Section 45W credit for a vehicle that does not meet the recapture length of time requirement due to a casualty loss (e.g., loss of vehicle resulting from fire, theft, accident, etc.). Insurance payouts for a casualty loss of a vehicle would not cover the amount of the recaptured tax credit, and taxpayers should not be required to absorb the loss of the recaptured credit as a result of a casualty.

² Section 1.30D-1(b) clarifies that the Section 30D credit shall be fully apportioned to a business taxpayer if it is used 50 percent or greater for business use (and prorated if less than 50 percent). Proposed Section 1.45W-4(b)(5) would provide that a clean vehicle must be used 100 percent in a trade or business to be eligible for a 45W credit.

III. Issues Raised by Allied Trade Associations

ELFA is aware that Comments have been submitted by the Association of Equipment Manufacturers (AEM), the Associated Equipment Distributors (AED), the American Rental Association (ARA), the Outdoor Power Equipment Institute (OPEI), and the Truck and Engine Manufacturers Association (EMA). These comments cover issues including: the definition of gross vehicle weight rating, issues associated with off-road mobile machinery, and the proposed effective dates for non-road mobile machinery. While these issues are not core to the leasing or financing of equipment, we would like to associate ourselves with those comments.

IV. Conclusion

We believe that the IRA has greatly advanced the deployment of renewable energy resources, represents a significant step for clean energy projects, and will further strengthen our nation's overall energy security. We thank you for the opportunity to provide comments regarding your proposed guidance on the qualified commercial clean vehicle credits under Section 45W. We believe that clarification of the provisions discussed above will improve the ability of taxpayers to use these tax credits to advance the renewable energy goals of the IRA.

We thank you for the opportunity to provide comments regarding your proposed guidance on the qualified commercial clean vehicle credits under Section 45W. We believe that clarification of the provisions discussed above will lower costs, reduce complexity and strengthen and potential punitive retroactive application for American businesses which that own or operate fleets of vehicles. Should you have any questions regarding this submission, please contact me at afishburn@elfaonline.org.

Sincerely,

A handwritten signature in blue ink that reads "Andy Fishburn". The signature is written in a cursive, flowing style.

Andy Fishburn
Senior Vice President, Public Policy
Equipment Leasing and Finance Association