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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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PLR-117025-21

Date:
February 16, 2022

In Re: Request to determine the correct claimant of credit under Section 30D

Legend

Date 1 =
Trust 1 =
Trust 2 =
State =
Parent =
Taxpayer =

Dear :

The rulings contained in this letter are based upon information and representations. This letter replies to a letter dated Date 1 in which Taxpayer requests a ruling that Taxpayer, and not Trust 1 or Trust 2, is entitled to claim credits for the purchase of certain qualifying motor vehicles for lease under § 30D of the Internal Revenue Code (Code).

The facts and representations submitted are summarized as follows:

Trust 1 and Trust 2 are each statutory trusts organized pursuant to the laws of State. They are each business trusts as described in § 301.7701-4(b), and are disregarded entities for federal tax purposes. Trust 1 and Trust 2 are fiscal year taxpayers and utilize the accrual method of accounting. Together, Trust 1 and Trust 2 are members of the same affiliated group that file a consolidated U.S. federal income tax return with Parent serving as the common parent. Parent is a regarded entity for federal tax purposes. Taxpayer is a limited liability company organized under the laws of State, and has elected to be classified as a corporation for federal income tax

purposes pursuant to § 301.7701-3(a). Taxpayer files a federal income tax return separate from Trust 1, Trust 2, and Parent, and is not part of their consolidated return.

Trust 1 and Trust 2 each separately purchase qualifying electric vehicles in order to make them available for lease. Upon purchase, title to such vehicles pass to Trust 1 or Trust 2 under the laws of various states. For the transactions that are the subject of this ruling request, Trust 1 and Trust 2 each intend to purchase new qualified plug-in electric drive motor vehicles for lease to Trust 1's and Trust 2's customers in the ordinary course of Trust 1's and Trust 2's businesses. All of the vehicles are of the year, make, and model identified on the Services list of qualified vehicles acquired after December 31, 2009. In other words, the vehicles: (1) are made by a manufacturer; (2) treated as motor vehicles for purposes of Title II of the Clean Air Act; (3) have gross vehicle weight ratings of less than 14,000 pounds; and (4) are propelled to a significant extent by an electric motor which draws electricity from batteries which have a capacity of not less than four kilowatt hours and are capable of being recharged from an external source of electricity.

Pursuant to their respective most recent trust agreements among the settlor, beneficiary, trust administrator, administrative trustee, and State trustee, Trust 1 and Trust 2 allocate beneficial ownership in their assets, which consist of title to the leased motor vehicles, to Taxpayer. Trust 1 and Trust 2 issue certificates to Taxpayer evidencing Taxpayer's special unit of beneficial interest (SUBI) in the trust property. The beneficial ownership of all of the leased electric motor vehicles that are titled in the name of Trust 1 and Trust 2 is represented to be with Taxpayer, per law of State, as well as the written agreements governing Trust 1 and Trust 2 as statutory trusts. However, while the controlling instruments of Trust 1 and Trust 2 permit Taxpayer to retitle the vehicles to itself under the various states in which Trust 1 and Trust 2 have titled the vehicles, Taxpayer has not done so.

When either Trust 1 or Trust 2 purchases a motor vehicle for lease, upon purchase, Trust 1 and Trust 2 immediately designate Taxpayer as the owner of the vehicle for federal income tax purposes pursuant to its certificate evidencing a SUBI in either Trust 1 or Trust 2's property. Trust 1 or Trust 2 is issued a certificate of title for such vehicle by the motor vehicle regulatory authority of the state in which the vehicle is titled. The vehicle is then placed in service by Trust 1 or Trust 2 for use by way of offering the vehicles for lease as part of Trust 1 or Trust 2's ordinary course of business. Further, at the time the vehicles are leased, Trust 1 and Trust 2 are listed as the lessors on the lease agreements. Taxpayer does not take part in either the purchasing, nor the leasing of the vehicles. Taxpayer does not have a leasing business through which the vehicles are leased.

Ruling Requested

Whether, under the facts described above, (1) Taxpayer is allowed or is eligible for credits under § 30D(a) upon the purchase of qualifying electric vehicles and offering

such vehicles for lease; and, consequently, whether (2) Trust 1 and Trust 2, after making such purchases and placing such vehicles in service by offering such vehicles for lease, are not allowed or are not eligible for such credits under § 30D(a) of the Code.

Law and Analysis

Section 30D(a) of the Code allows as a credit against income tax imposed for the taxable year an amount equal to the sum of the credit amounts determined under § 30D(b) of the Code with respect to each new qualified plug-in electric drive motor vehicle placed in service by a taxpayer during the taxable year. The amount of the credit is determined under § 30D(b) of the Code.

Section 30D(d)(1) of the Code defines a credit-eligible "new qualified plug-in electric drive motor vehicle" as a motor vehicle:

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity.

The Service has not promulgated regulations interpreting § 30D of the Code. However, the Service issued Notice 2009-89, 2009-48 I.R.B. 714, which set forth "interim guidance, pending the issuance of regulations, relating to" the credits authorized by § 30D. Section 5.02 of Notice 2009-89 provides that 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 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. Section 4.02 of Notice 2009-89 provides that "a vehicle is not 'acquired' before the date on which title to that vehicle passes under state law."

The electric vehicles in question would satisfy all elements for such credits under the definition of "new qualified plug-in electric drive motor vehicle" in § 30D(d)(1). As discussed above, all of the motor vehicles at issue in this letter ruling request are (1) made by a manufacturer; (2) treated as motor vehicles for purposes of title II of the Clean Air Act; (3) have gross vehicle weight ratings of less than 14,000 pounds; and (4) are propelled to a significant extent by an electric motor which draws electricity from

batteries which have a capacity of not less than four kilowatt hours and are capable of being recharged from an external source of electricity. Such vehicles, which are also on Service's list of qualified vehicles acquired after December 31, 2009, would therefore satisfy the definitional elements set forth in subsections (d)(1)(C) through (d)(1)(F).

For a taxpayer to obtain this credit, § 30(d)(1)(A) requires that the "original use" of the qualifying vehicle commence with that taxpayer. Actions that constitute or are consistent with "original use" are not delineated in the statute or accompanying guidance. First, we look to the acquisition of the electric vehicles. Next, we look to the original use, when the vehicles were originally placed in service by being made available for lease.

Trust 1 and Trust 2 purchased qualifying electric vehicles, and the vehicles were titled to Trust 1 or Trust 2 when title to the vehicles passed under state law. Trust 1 and Trust 2 each purchased the vehicles with the intent to lease them in the normal course of their respective businesses. Subsequent to the purchase of and titling of the vehicles, and as part of Trust 1 and Trust 2's normal business operations, Trust 1 and Trust 2 placed the vehicles in service by offering them for lease, with Trust 1 or Trust 2 being listed as the lessor on the respective lease agreements when the lease transactions were completed. Taxpayer, as a SUBI holder, did not title the vehicles under any state law, offer any vehicle for lease in the course of its business operations, nor did Taxpayer enter into any leasing transaction with any lessee.

Because Trust 1 and Trust 2 are disregarded entities for federal tax purposes, the purchases and subsequent leases by Trust 1 and Trust 2 of electric vehicles for lease in the Transactions would entitle Parent to federal income tax credits under § 30D. Parent, as the regarded parent of Trust 1 and Trust 2, would be deemed to have acquired the vehicles and placed such vehicles in service. Taxpayer neither acquired the vehicles nor placed the vehicles in service, and therefore is ineligible for the credit under § 30D.

Conclusion

Based on the representations made and consideration of the descriptions and documents submitted, we conclude that the requirements of § 30D have not been met to qualify Taxpayer for entitlement to claiming the § 30D credit. Based solely on the facts and representations submitted, we are adverse to Taxpayer's requested ruling.

Except as specifically set forth above, we neither express nor imply any opinion concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on

examination. The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate Industry Director, LB&I. A copy of this ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Patrick S. Kirwan
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: