



LATEST ON LOUISIANA'S ALTERNATIVE FUEL MOTOR VEHICLE TAX CREDIT: THE LOUISIANA DEPARTMENT OF REVENUE RELEASES NOTICE OF INTENT FOR NEW RULE

On September 20, 2012, the Louisiana Department of Revenue (the "Department") released a Notice of Intent to promulgate the latest iteration of the Alternative Fuel Motor Vehicle Tax Credit regulation. The proposed Rule adopts a narrower construction of the Alternative Fuel Motor Vehicle Tax Credit statute, La. R.S. 47:6035, than its predecessor Emergency Rule which was subsequently withdrawn by Governor Bobby Jindal. The Jones Walker State and Local Tax ("SALT") Team's previous e*bulletin on the former Emergency Rule is available [here](#). The primary difference between this proposed Rule and the Department's now-rescinded Emergency Rule is the elimination of "Flex Fuel" vehicles from those eligible "alternative fuel" motor vehicles; the Department notes in the proposed Rule's Fiscal and Economic Impact Statement that such disqualification could save the State of Louisiana up to \$240 million per year.

The statute provides an income tax credit for (1) the purchase of new vehicles which use alternative fuels, or (2) the conversion of vehicles to alternative fuel use. The statute defines "alternative fuel" as any fuel that results in emissions "comparably lower" than those from gasoline or diesel, and specifically includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity. According to the statute, a taxpayer may claim a 50 percent credit for the exact cost of the purchased "qualified clean-burning motor vehicle fuel property" necessary to operate on the alternative fuel. As an alternative to attempting to calculate the actual cost of such property included in a new alternative fuel vehicle, the statute provides that taxpayers who purchase a new vehicle containing "qualified clean-burning motor vehicle fuel property" may simply take a credit equal to 10 percent of the cost of the motor vehicle or \$3,000, whichever is less.

The proposed Rule differs in a number of key respects from the Department's now-rescinded Emergency Rule. First, the Department's abandons the rebuttable presumption that a vehicle qualifies for the tax credit if it is listed by the U.S. Department of Energy as an alternative fuel vehicle, which included "Flex Fuel" vehicles that can run on either gasoline or alternative fuel. Such qualified vehicles included the "Flex Fuel" versions of certain popular models such as the Ford F-150, GMC Yukon, Chevrolet Tahoe, Chevrolet Malibu, Ford Fusion, Chrysler 200 and 300, Dodge Charger, and Chevrolet Silverado, all of which run on either gasoline or E85 ethanol. Instead, the proposed Rule provides throughout that the tax credit is not allowed for "acquisitions of motor vehicles capable of being propelled by an alternative fuel, but that include only a single fuel storage and delivery system and retain the capability to be propelled by petroleum gasoline or petroleum diesel." That is, if the modified or purchased vehicle can be propelled by petroleum gasoline or petroleum diesel, such capability must be in a separate fuel storage and delivery system, independent of the alternative fuel system.

Additionally, in defining the "Cost of Qualified Clean-Burning Motor Vehicle Fuel Property," the proposed Rule expressly includes electric and hybrid vehicles as being qualified for the credit, but similarly limits the eligible equipment. In particular, the amount of the allowable credit is limited to the "qualified clean-burning motor vehicle fuel property that stores and delivers the electricity to the motor." The credit, however, is not authorized on a separate fuel storage and delivery system which uses petroleum gasoline or diesel as a fuel source.

In the proposed Rule, the Department has also expanded the list of excluded items from the calculation of the "cost" of a new vehicle for purposes of computing the available tax credit. In addition to the exclusion of rebates and discounts



provided by the manufacturer or seller of the vehicle, the Department now excludes from the "cost" of a new vehicle all state and local sales taxes, as well as all vehicle registration, title, and processing fees.

Along with the eligibility criteria changes, the proposed Rule also adds numerous documentation and certification requirements for taxpayers claiming the tax credit. The taxpayer must provide not only the year, make, model, and vehicle identification number ("VIN") of the vehicle, but also must now certify, among other things, that (1) the vehicle is registered in Louisiana and (2) the vehicle has a separate fuel storage and delivery system for the alternative fuel if the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel. Moreover, if the tax credit relates to a modification of a vehicle, the proposed Rule now requires that the taxpayer must also (1) certify that the installed qualified clean-burning motor vehicle fuel property is certified by the U.S. Environmental Protection Agency, and that the technician performing the installation is certified by the manufacturer of the equipment to perform the installation, and (2) provide an itemization of costs associated with the modification, including copies of all invoices for the materials and installation services for the modification. The latter requirement of an itemized list of costs is another new addition by the Department as part of the proposed Rule.

Other differences between the proposed Rule and Emergency Rule include clarification that the lease and rental of a qualifying fuel vehicle does not qualify as a purchase for purposes of the tax credit. Moreover, the taxpayer claiming the tax credit must be the title owner of the eligible vehicle and must be subject to either Louisiana individual or corporate income tax. Finally, the proposed Rule also provides that the Department may withhold the issuance of a tax credit to any taxpayer who is required to pay an alternative road use tax for a vehicle operating on certain alternative fuels (such as liquefied natural gas ("LNG"), compressed natural gas ("CNG"), or liquefied petroleum gas ("LPG")), and who has not paid such alternative road use tax and received a decal from the Department evidencing such payment.

A copy of the Department's proposed Rule is available [here](#).

—[Justin B. Stone](#) and [Matthew A. Mantle](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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