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# IS A BONANZA OF ELECTRIC VEHICLE GIFTS ON THE HORIZON?

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**Abstract**

The Inflation Reduction Act of 2022 has the potential to encourage taxpayers to make automobile-related gifts. However, the genesis of such gift-giving likely will not be due to genuine generosity, but rather will be part of a strategy designed to achieve significant income tax savings.

Keywords: Inflation Reduction Act of 2022, Internal Revenue Service, electric vehicles, gift tax, tax compliance
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# IS A BONANZA OF ELECTRIC VEHICLE GIFTS ON THE HORIZON?

Jay A. Soled and James Alm*

**ABSTRACT**

The Inflation Reduction Act of 2022 has the potential to encourage taxpayers to make automobile-related gifts. However, the genesis of such gift-giving likely will not be due to genuine generosity, but rather will be part of a strategy designed to achieve significant income tax savings.

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## I. INTRODUCTION

Predicting the future is never easy. This is particularly true in terms of the behavioral effects of tax legislation. Some effects can readily be anticipated (e.g., raising cigarette taxes has caused taxpayers to smoke less);[1] other effects may prove unanticipated (e.g., allowing accelerated depreciation for vehicles weighing over 6,000 pounds has spurred sport utility vehicle (SUV) purchases).[2]

The Inflation Reduction Act (IRA) of 2022,[3] in particular, that part related to electric car purchases, is yet another example of how predicting the behavioral effects of tax legislation is difficult to calibrate. Congress anticipates that its newly formulated tax credits for electric car purchases will hasten the general populace's transition away from internal combustion engine utilization[4] and generate battery mineral production in the United States and those countries with

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[1] *See* Pearl Bader, David Boisclair & Roberta Ferrence, *Effects of Tobacco Taxation and Pricing on Smoking Behavior in High Risk Populations: A Knowledge Synthesis*, 8(11) INT'L J. ENV'T RSCH. & PUB. HEALTH, 4118 (2022) ("Tobacco taxation, passed on to consumers in the form of higher cigarette prices, has been recognized as one of the most effective population-based strategies for decreasing smoking and its adverse health consequences.").

[2] *See* Danny Hakim, *In Tax Twist, Big Vehicles Get the Bigger Deductions*, N.Y. TIMES (Dec. 2002), https://www.nytimes.com/2002/12/20/business/in-tax-twist-big-vehicles-get-the-bigger-deductions.html (explaining how the deduction for sport utility vehicles that exceed 6,000 pounds incentivizes taxpayers to make such purchases).

[3] Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (signed Aug. 16, 2022).

[4] *See* Justin Westbrook, *Electric Vehicles Are Way, Way More Energy-Efficient Than Internal Combustion Vehicles*, MOTORTREND (2022), https://www.motortrend.com/news/evs-more-efficient-than-internal-combustion-engines/ ("Out of the 8.9 million barrels of gasoline

which the United States has free trade agreements.[5] Indeed, these effects seem likely to occur. However, Congress also expects that the tax credit will benefit taxpayers of moderate economic means. In this regard, Congress may have made a miscalculation. Instead, this legislation may result in a bonanza of automobile-related gifts by taxpayers whose incomes meet the legal requirements for the generous electric car tax credit to related taxpayers (e.g., parents, grandparents, and siblings) whose large incomes would otherwise disqualify them for this credit.

To explore and address the implications associated with this possible automobile-related gift bonanza, this analysis is organized in the following fashion: The next section overviews the portion of the IRA related to electric car purchases—the basics of the law as well as its intent. Next, this analysis explores the IRA's likely behavioral impact upon individual taxpayers and its income and transfer tax consequences. The analysis then makes a remedial legislative suggestion, designed to help Congress, insofar as automobile purchases are concerned, fulfill its legislative objectives. Finally, this analysis concludes.

## II. OVERVIEW OF THE REVAMPED ELECTRIC CAR TAX CREDIT

Prior to the passage of the IRA, the tax credit for electric car purchases—introduced by the Energy Improvement and Extension Act of 2008[6]—enjoyed relatively broad success in encouraging taxpayers to make electric car purchases.[7]

Initially, the Code permitted an electric tax credit for any vehicle that met a series of listed conditions.[8] These conditions were largely automobile manufacturer–centric. Each manufacturer had to petition the IRS to certify whether purchasers of their product would qualify for the tax credit based upon battery capacity.[9] Furthermore, once the number of qualifying vehicles that a

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consumed daily in the U.S. on average, only 1.8 million gallons, or approximately 20 percent, actually propel an internal combustion vehicle forward. The other 80 percent is wasted on heat and parasitic auxiliary components that draw away energy. As the world begins its shift to EV proliferation, the good news is electric vehicles are far more energy efficient on the road.").

[5] *See* Reed Blakemore & Paddy Ryan, *The Inflation Reduction Act Places a Big Bet on Alternative Mineral Supply Chains*, ENERGYSOURCE (2022), https://www.atlanticcouncil.org/blogs/energysource/the-inflation-reduction-act-places-a-big-bet-on-alternative-mineral-supply-chains/ ("This sets a highly ambitious target for alternative mineral supplies within a provision designed to incentivize domestic EV deployment.").

[6] Pub. L. No. 110-343, § 205(a), 122 Stat. 3765, 3835.

[7] *See* Sally Parker, *Want Consumers to Buy Electric Cars? Give Them Tax Credits*, CHI. BOOTH REV. (2022), https://www.chicagobooth.edu/review/want-consumers-buy-electric-cars-give-them-tax-credits ("[R]esearch by University of Wisconsin's Cheng He, University of South Carolina's Ö. Cem Öztürk, Georgia Institute of Technology's Chris Gu, and Chicago Booth's Pradeep K. Chintagunta provides . . . support . . . for using tax credits to encourage electric-vehicle purchases. They find that tax credits are effective, relatively low cost compared with alternatives, and benefit many middle-class families.").

[8] These conditions were delineated in paragraphs (d) and (f) of the prior version of I.R.C. § 30D.

[9] Notice 2009-89, §§ 5.01, 5.03(5), *modified by* Notice 2016-51.

manufacturer sold equaled or exceeded 200,000 units, the availability of the credit would be gradually phased out.[10] Computation of this prior electric car credit was based solely on battery capacity. The initial credit was $2,500.[11] An additional $417 tax credit was made available for each kilowatt hour of capacity in excess of five kilowatt hours, up to a total of $5,000,[12] capping the total electric car tax credit at $7,500.[13]

The IRA jettisons these requirements from the Energy Improvement and Extension Act of 2008. Instead, this new legislative initiative increases the burdens on manufacturers that wish their patrons to qualify for the tax credit. The critical requirements on manufacturers for tax credit qualification are now threefold in nature.

The first pertains to the battery. It must (i) have a capacity of not less than seven kilowatt hours,[14] (ii) be capable of being recharged from an external source of electricity,[15] and (iii) be manufactured or assembled in North America.[16]

The second requirement pertains to minerals. It requires that a certain percentage of the minerals contained in the battery (gradually increasing over time) must be extracted or processed in the United States or any country with which the United States has a free trade agreement.[17]

The third and final battery requirement pertains to final vehicle assembly: such assembly must occur within North America.[18]

Importantly, for credit qualification, the IRA also imposes requirements beyond those it places upon automobile manufacturers. The IRA now limits electric tax credit availability based upon automobile price and taxpayer income. More specifically, the legislation precludes tax credit availability if a manufacturer's suggested retail price exceeds a certain dollar threshold: $80,000 for vans, $80,000 for sport utility vehicles, $80,000 for pickup trucks, and $55,000 for all other vehicles.[19] Also, if the taxpayer's modified adjusted gross income in the year of purchase or the preceding taxable year exceeds a set threshold—$300,000 in the case of a joint return or a

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[10] I.R.C. § 30D(e)(2) (credit availability phaseout once a manufacturer had sold at least 200,000 units in the United States).

[11] I.R.C. § 30D(b)(2).

[12] *Id.* § 30D(b)(3).

[13] *Id.* § 30D(b)(2), (b)(3).

[14] *Id.* § 30D(d)(1)(F)(i).

[15] *Id.* § 30D(d)(1)(F)(ii).

[16] *Id.* § 30D(e)(2)(A). Although this calculation is highly technical in nature, the essence is that the value of the components contained in such batteries that were manufactured or assembled in the United States must equal or be greater than a set percentage that starts at 50 percent (before 2024) and gradually increases to 100 percent (after 2028). *Id.* § 30D(e)(2)(B).

[17] *Id.* § 30D(e)(1).

[18] *Id.* § 30D(d)(1)(G).

[19] *Id.* § 30D(f)(11).

surviving spouse, \$225,000 in the case of a head of household, and \$150,000 in the case of all other taxpayers[20]—then the taxpayer is not eligible for the tax credit.[21]

The purpose of these income limitations is self-evident. They are meant to encourage those taxpayers who have modest economic means and who are not in the market for ultraluxury vehicles to purchase electric vehicles, as opposed to providing incentives to the wealthy for these purchases. However, the current law may not prevent a gift-giving tax strategy that allows high-income taxpayers to circumvent these income limitations.

## III. AUTOMOBILE GIFT-GIVING BONANZA

Taxpayers typically try to take advantage of tax breaks. Thus, when it comes to the robust federal tax credit for electric car purchases, there is every reason to assume that taxpayers will attempt to capitalize upon this generous tax credit—even in ways that were not intended. In particular, taxpayers may engage in an automobile gift-giving ploy (described in further detail below) so that the tax credit will in fact inure to the benefit of high-income taxpayers—a consequence not planned or desired by Congress.

Before delving into the details of the possible ploy that taxpayers may undertake, some context is important. This context involves the nation's transfer tax system and, more specifically, the gift tax found in Chapter 12 of the Code.

Under current law, taxpayers who make gifts are theoretically supposed to pay the gift tax.[22] The reason that the adverb "theoretically" is used here is because most taxpayers never actually incur any gift tax.[23] The reasons are twofold. First, the Code provides a generous annual exclusion for so-called present-interest gifts that do not exceed, on a per-person basis, \$17,000 annually (or \$34,000 for married taxpayers who wish to split their gifts).[24] Second, during the lifetime of every taxpayer, the Code also shelters taxpayers whose cumulative lifetime gifts do not exceed the basic exclusion amount (currently, \$12,920,000).[25]

[20] *Id.* § 30D(f)(10)(B).

[21] *Id.* § 30D(f)(10)(A).

[22] *Id.* § 2501(a).

[23] In 2020 (the most-recent year figures are available), for example, the number of gift tax returns that resulted in actual gift tax payments were 516 for the entire United States. This numerical figure is not a misprint. *See* IRS, Statistics of Income Statistics, published annually at https://www.irs.gov/statistics/soi-tax-stats-total-gifts-of-donor-total-gifts-deductions-credits-and-net-gift-tax.

[24] *Id.* § 2503(b); Rev. Proc. 2021-45, § 3.43. This is the annual exclusion for 2023, but this dollar figure is annually adjusted for inflation.

[25] I.R.C. § 2505(a); Rev. Proc. 2021-45, § 3.41. This is the basic exclusion amount for 2023, but this dollar figure is annually adjusted for inflation.

Beyond the generous allowances that the Code sets forth, there is another factor to consider: taxpayer compliance in the realm of the gift tax is lackluster at best and abysmal at worst.[26] Why? Unless gift tax is owed (which will not be the case in the vast majority of instances), there is no penalty in place if taxpayers are derelict in fulfilling their filing obligations.[27] In addition, when it comes to gift-giving, there is no third-party tax information reporting. In the absence of such reporting, taxpayer compliance ordinarily plummets.[28] Finally, many taxpayers likely believe that they should be thanked rather than taxed for their generosity.

The bottom line is that the nation's gift tax will likely not prove to be a meaningful deterrent to any electric car vehicle gifts. In the absence of any transfer tax impediment, the scenario depicted in the next paragraph (or ones similar in nature) is apt to unfold.

Consider the tax plight of a taxpayer and her spouse, Mr. and Mrs. Rich, who together earn $350,000 annually. They wish to purchase a 2024 Cadillac Lyriq SUV with a manufacturer's list price of $77,500. However, due to the income threshold limitations,[29] the Riches recognize that they will not qualify for the electric car tax credit. Instead, the Riches recruit their daughter Penny, who earns $100,000 annually, to purchase the vehicle, knowing that, given her annual income, she would qualify for the tax credit. Once purchased, and sometime soon thereafter, Penny will gift the vehicle title to her parents; and, at a later point in time, the Riches will gift the sum of $70,000 (i.e., $77,500 less the $7,500 electric car tax credit that Penny would receive) to Penny.[30]

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[26] *See* Mitchell M. Gans & Jay A. Soled, *Reforming the Gift Tax and Making It Enforceable*, 87 BOSTON L. REV. 759 (2007) (explaining the reasons why gift tax compliance is lax).

[27] *Id.* at 777 ("But application of each of the foregoing penalties is predicated upon there being an actual gift tax due. In the absence of a gift tax being due, there can consequently be no accuracy-related penalty, failure-to-file penalty, or failure-to-pay penalty. Thus, in a world where most taxpayers do not ordinarily make gifts that exceed their annual gift tax exclusion (currently, $12,000) or their lifetime gift tax exemption of $1 million, there is virtually no chance that any of the foregoing penalties will apply.").

[28] *See* CONG. BUDGET OFF., TRENDS IN THE INTERNAL REVENUE SERVICE'S FUNDING AND ENFORCEMENT, at fig.4 (July 2020), https://www.cbo.gov/publication/56467#footnote-062-backlink [https://perma.cc/DV5Z-372V]; *see also* Leandra Lederman & Joseph C. Dugan, *Information Matters in Tax Enforcement,* 2020 B.Y.U. L. REV. 145, 145–46 (explaining that "government needs information about taxpayers' transactions in order to determine whether their reporting is honest" and that third-party reporting helps the government obtain that information); Joel Slemrod, *Cheating Ourselves: The Economics of Tax Evasion*, 21 J. ECON. PERSPS. 25, 37 (2007) (correlating "the rate of compliance and the presence of enforcement mechanisms such as information reports and employer withholding").

[29] *See supra* note 22 and accompanying text.

[30] The sequence of these events can easily be reversed—that is, the Riches could have readily made a large monetary to gift to their daughter, and, after she purchased the car, she could have reciprocated and gifted title to the car to her parents.

Theoretically, the IRS could challenge the legitimacy of the $70,000 gift as a disguised purchase by the taxpayer masquerading as a bona fide gift.[31] However, since the overall dollar stakes are rather small (i.e., possible disallowance of the electric car tax credit), as a practical matter the IRS is not apt to pursue any remedial action.[32] Furthermore, the Riches and their daughter could use the element of time to obscure the nature of their transactions: that is, they could transfer the monetary sum in one year and title to the vehicle in another year.

The scenario depicted above is not far-fetched. To the contrary, on a family-by-family basis, with thousands of dollars of possible tax savings at stake, the odds seem likely for widespread replication of this practice as taxpayers learn from the media and the internet of its potential viability.

Commentators might argue to the contrary that this type of back-to-back gifting scheme will not become commonplace. However, there are countervailing factors that may well make automobile gifting an attractive tax-savings device. Consider the following possible objections and the reasons why they are not creditable:

- First, some commentators might argue that the steps involved with the scheme are too complicated for most taxpayers to understand, especially relative to simply overstating deductions or underreporting income. However, the two enumerated steps that are involved (i.e., an automobile purchase followed by two interrelated gifts) are equal to or less than many other widely utilized tax-avoidance strategies that involve similar payoffs.[33]

- Second, other commentators might contend that the payoff is too small to warrant its undertaking. However, there is evidence from IRS audits that it is common for individuals to engage in tax avoidance/tax evasion strategies that generate comparable tax savings at the back-to-back gifting scheme. Recent statistics from the IRS for fiscal year 2021 indicate that the average amount of taxes recovered from all IRS audits (field audits plus

[31] Admittedly, there are several court cases that have deemed reciprocal gifts as illegitimate taxpayer ploys to circumvent their gift tax obligations. Furst v. Comm'r, T.C.M. 1962-221; Schultz v. United States, 493 F.2d 1225 (4th Cir. 1974); Sather v. Comm'r, T.C.M. 1999-309, *aff'd in part & rev'd in part*, 251 F.3d 1168 (8th Cir. 2001); Est. of Shuler v. Comm'r, T.C. Memo 2000-392, *aff'd*, 282 F.3d 575 (8th Cir. 2002).

[32] Consider, too, the fact that if the IRS did conduct an audit, by necessity, it would be labor-intensive in nature and awkward, engendering interviewing various family members and receiving a lot of paperwork.

[33] For example, regarding typical sale-and-leaseback arrangements with family members, taxpayers have to endure a plethora of complicated legal steps to secure possible tax savings that are often designed to yield thousands—but not millions—of dollars of tax savings. *See* James John Jurinski, *All in the Family*, 41 REAL EST. TAX'N 41, 43 (2013) ("On the other hand, an excessive rent payment can be a tax-advantaged way to shift income among family members. If the inflated rent goes to a family member in a lower tax bracket, the family as a unit may be able to realize a lower over-all tax rate on the family's earnings. This could take the form of a sale lease-back or gift lease-back.").

correspondence audits) across all income classes is $12,256,[34] an amount only somewhat greater than the $7,500 tax credit available to purchasers of electric vehicles. Furthermore, the overwhelming percentage of IRS audits (85 percent) is from correspondence audits; for this category of IRS audits, the average amount of taxes recovered across all income classes is $8,187, an amount even closer to the $7,500 tax credit.[35] Further, the average amount of taxes recovered from IRS correspondence audits is always less than $7,500 for all income classes less than $500,000; even for taxpayers earning incomes in the $500,000–$1,000,000 class, the average amount of taxes recovered in an audit is only $10,110; and it is only for taxpayers with incomes greater than $1 million that the taxes recovered from correspondence audits are well above the $7,500 electric vehicle tax credit.[36]

- Third, some commentators will simply argue that taxpayers will not, for whatever reason, bother with cheating to gain tax advantages when buying electric vehicles. However, there is clear evidence that this argument is simply untrue. In 2011, the Treasury Inspector General for Tax Administration (TIGTA) found that individuals fraudulently claimed millions of dollars of electric vehicle tax credits.[37] A follow-up TIGTA report in 2019 found that these practices have continued largely unchanged.[38] There is, therefore, recent history demonstrating that taxpayers are ready to use questionable practices to gain electric vehicle tax credit advantages.

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[34] *See* INTERNAL REVENUE SERVICE DATA BOOK, 2021: PUBLICATION 55-B, at tbl.18 (Washington, D.C., May 2022), https://www.irs.gov/pub/irs-pdf/p55b.pdf. Using Table 18, the average amount of taxes recovered from all IRS audits is calculated by dividing the total "Recommended additional tax" for all individual income tax returns in column (4), or $8,076,816,000, by the total "Examinations closed in Fiscal Year 2021" in column (1), or 659,012.

[35] *Id.* This figure is calculated from Table 18 by dividing the "Recommended additional tax" for correspondence audits in column (6), or $4,580,195,000, by the "Examinations closed in Fiscal Year 2021" for correspondence audits in column (3), or 559,421.

[36] *Id.* All figures are calculated from Table 18 by dividing the "Recommended additional tax" for correspondence audits in column (6) by the "Examinations closed in Fiscal Year 2021" for correspondence audits in column (3) for each respective income class.

[37] *See* TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2011-41-011, INDIVIDUALS RECEIVED MILLIONS OF DOLLARS OF ERRONEOUS PLUG-IN ELECTRIC AND ALTERNATIVE VEHICLE CREDITS (Feb. 2011) ("Approximately $33 million in credits for plug-in electric and alternative-fueled vehicles were erroneously claimed by at least 12,920 taxpayers through July 24, 2010. . . . That means about 20 percent of the $163.9 million in credits claimed by taxpayers from January 1, 2020 to July 24, 2010 for plug-in electric and alternative vehicle credits were claimed in error.").

[38] *See* TREASURY INSPECTOR GEN. FOR TAX ADMIN., 2019-30-072, Millions of Dollars in Potentially Erroneous Qualified Plug-in Electric and Alternative Vehicle Credits Continue to Be Claimed Using Ineligible Vehicles (Sept. 2019) ("The IRS does not have effective processes to identify and prevent erroneous claims for the Plug-in Credit. . . . TIGTA identified: 16,510 tax returns for which taxpayers received approximately $73.8 million in Plug-in Credits; 1,509 tax returns for which taxpayers received more than $8 million in Plug-in Credits; and 68 tax returns for which taxpayers received approximately $1 million Plug-in Credits.").

Overall, then, there are many taxpayers who may well choose this gift-giving strategy as a means to reduce their income tax burdens. After all, given recent automobile price escalations,[39] the electric car tax credit is one possible refuge that taxpayers still have to shield themselves from paying exorbitant amounts. Consider the fact, too, that after the imposition of the federal income tax, the state income tax, and payroll taxes, the take-home pay of the Riches (in the prior example), who earn $350,000, is likely to be in the $200,000 range. The sum of $7,500 is thus the equivalent of two weeks' worth of combined after-tax wages, making it economically attractive to undertake this strategy.

Even so, two points of clarification need to be made.

First, the practice of electric automobile gift-gifting probably will not be omnipresent. There are several reasons not to anticipate wholesale abuse: (1) many taxpayers abhor the administrative paperwork and overall hassle associated with the Division of Motor Vehicles and title transfers; (2) wealthy taxpayers often relish their purchases of expensive automobiles and sports utility vehicles, and so the caps on manufacturers' listed prices may dissuade this socioeconomic segment of the population from purchasing vehicles not deemed worthy of their financial status; and (3) the Code does not make any inflation adjustments on the caps on either the manufacturers' listed prices or the amount of the credit itself, so, over time, the allure—and the payoff—of this tax-savings device will diminish. Nevertheless, having said this, the enticement of tax credit money is attractive, so the practice of electric automobile gift-giving is apt to be quite vibrant.

Second, the Treasury Department probably cannot stem this practice by promulgating regulations that warn taxpayers against making back-to-back gifts such as the one highlighted here. As a practical matter, a Treasury regulation is not apt to be incorporated into tax software packages as part of general queries to be raised with taxpayers; since the vast majority of taxpayers utilize tax-preparation software to prepare their returns,[40] the absence of a question related to electric automobile gift-giving would negate a regulation's effectiveness to stem this taxpayer practice. In addition, even if the putative tax preparation software were to solicit a user response regarding this issue, taxpayers could readily employ a form of "convenient" amnesia and selectively forget about the transgressive nature of their actions.

## IV. Remedial Policy Recommendation

Given the fact that a healthy segment of taxpayers may employ the gift-giving strategy outlined above and also that there are no readily available administrative "fixes" for this problem,

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[39] *See* Bailey Schultz, *Want A New Car? Ownership Costs Are Way Up, So Plan to Spend about $900 A Month on It*, USA TODAY (2022), https://www.usatoday.com/story/money/cars/2022/08/18/owning-car-cost-more-expensive/10349454002/ ("The average price paid for a new vehicle was the highest on record in July at $48,182, up 12% from the prior-year period, according to Kelley Blue Book.").

[40] *See Returns Filed, Taxes Collected, and Refunds Issued*, IRS DATA BOOK 2021, at tbl.4 (2021), https://www.irs.gov/statistics/returns-filed-taxes-collected-and-refunds-issued (for fiscal year 2021, indicating that 90 percent of individual returns were filed electronically).

there is a simple legislative remedy to close this loophole. To eliminate taxpayers from gaming the electric car tax credit, Congress should add a "disallowance provision" to the end of Code section 30D, along the following lines:

> (h) Any taxpayer who gratuitously transfers (via a gift, not a bequest) a new qualified plug-in electric drive motor vehicle in the first or second calendar year of purchase forfeits the credit.

Adding a provision such as this to the Code would put an immediate end to a practice that is illegitimate and undermines one of the central goals of this credit: to make electric car vehicle ownership commonplace among the middle class and thereby to affect climate change. The sooner Congress takes this course of action, the sooner this policy objective will be fulfilled.

## V. CONCLUSION

In light of taxpayer tendencies to utilize most available tax-savings opportunities, automobile gift-giving may soon become a trend. This phenomenon would subvert the IRA's legislative intent of having the electric car tax credit accrue to those taxpayers of moderate economic means, and it would also cost the Treasury lost revenue and ultimately undermine taxpayer confidence in the tax system.

Congress should therefore be proactive and reform the Code. If it does, taxpayers would be stymied in their efforts to circumvent the statutory income limitations, and the car-gifting prediction suggested in this analysis will be stymied. Indeed, by making the proposed statutory refinement, the integrity of the nation's tax system will be enhanced, and the legislative goal embodied in the IRA of reducing the nation's carbon emissions will be more readily attainable.