

# How States Are Utilizing Electric Vehicle Tax Credits

A Practical Guidance® Article by

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This article addresses state and local taxation of and taxpayer incentives regarding the purchase and use of electric vehicles.

State and local tax authorities are facing the same issues today as they did before the pandemic: determining how to use their arsenal of audit activities, interpreting existing tax laws, and crafting and passing new tax proposals to combat budget deficits and increase tax revenue. The electric vehicle (EV) industry is an area that is ripe for states to try to apply outdated tax laws to a cutting-edge business.

## Background

That said, states must balance their desire to increase tax revenue with the competing need to encourage new technological developments.

- As a matter of public policy, states, municipalities, and local utilities are making a concerted effort to encourage EVs. While the programs in place are largely targeted to

consumers, it is important for manufacturers to know about EV tax credits, even if the benefits are indirect. These benefits include tax credits and rebates on EV purchases, as well as incentives for the purchase and installation of charging stations and other infrastructure. It is largely localities and local utility providers that are offering credits, rebates, and electricity rate reductions for purchasing and installing charging stations, but these are widely available.

- Apart from rebates, credits, and lower electricity rates, states and localities are getting creative to encourage investment in EVs because it represents an important policy goal for them—even if their budgets cannot afford it. Free public EV charging, free vehicle registration, free parking, unrestricted use of carpool lanes, reduced rates on toll roads, and relaxed vehicle inspection rules are among the outside-the-box benefits offered by state and local governments.
- The Infrastructure Investment and Jobs Act that Congress passed, and the president signed, in November 2021 authorized \$7.5 billion in programs designed to encourage the development of a national network of EV charging stations. In addition to that dedicated pool of money, more than \$65 billion is earmarked to upgrade clean energy infrastructure, which may also cover EV infrastructure. This money is split between all the states, with the largest allocations of funds going, unsurprisingly, to the most populous states.
- States are not well equipped to effectively spend this money, as they aren't experts in the automotive or energy industries. As such, states are actively looking for proactive private business partners. States have a wide latitude to broker incentive deals with companies that are expanding business and creating jobs. These

conditions present a great opportunity for both companies in the automotive and energy industries to partner with state governments to share in the funding.

- A handful of auto manufacturers have monetized otherwise unusable emissions and fuel efficiency credits that they have received from either federal or state governments. The sale of such credits may not be part of normal business operations and may not be integral to everyday business or connected to a particular state where a company does business. In such cases, taxpayers have been able to argue that gains from the sale of such credits should be excluded entirely from the tax base because they are either nonbusiness income or excludable under the doctrine of multifactority.
- State and local governments often struggle to apply old tax laws to cutting-edge businesses. For example, when it comes to exemptions and exclusions for sales and use tax in the realm of EV and EV technology, the application of state and local sales and use tax laws can quickly get nuanced and unclear. The variety of rules from jurisdiction to jurisdiction make it all the more difficult for companies in this space to be confident that they are compliant in all the places where they are doing business.

For more information on state, local, and utility tax credits and incentives; sales and use tax issues; and the taxation of EVs and equipment, charging stations, and telematic systems, please see our [tax opportunities and EV credits presentation](#), which is part of the Morgan Lewis [Automotive Hour webinar series](#).

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Cosimo A. Zavaglia advises corporations, partnerships, and individuals on state and local tax controversy, planning, and transactional matters. Cosimo routinely represents clients in high-stakes state and local tax audits, appeals, and litigations in matters throughout the United States, including defending clients in state False Claims Act cases and sales and use tax, individual residency, withholding tax, corporate income tax, and real estate transfer tax audits and disputes. He also advises clients on developing state and local tax planning strategies for corporate acquisitions, dispositions, restructurings, and mergers.

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