

110TH CONGRESS  
1ST SESSION

# S. 1125

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

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## IN THE SENATE OF THE UNITED STATES

APRIL 17, 2007

Mr. LOTT (for himself, Mr. CONRAD, Mr. SMITH, Mr. COCHRAN, Mr. NELSON of Nebraska, Mr. GRAHAM, Mr. ISAKSON, Mr. STEVENS, Mr. HAGEL, Ms. LANDRIEU, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Freight Rail Infra-  
5       structure Capacity Expansion Act of 2007”.

1 **SEC. 2. CREDIT FOR FREIGHT RAIL INFRASTRUCTURE CA-**  
 2 **PACITY EXPANSION PROPERTY.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 (relating to business-related credits) is amended by  
 6 adding at the end the following new section:

7 **“SEC. 450. FREIGHT RAIL CAPACITY EXPANSION CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,  
 9 the freight rail capacity expansion credit determined under  
 10 this section for the taxable year is an amount equal to  
 11 25 percent of the cost of the following property placed in  
 12 service during the taxable year:

13 “(1) New qualified freight rail infrastructure  
 14 property.

15 “(2) New qualified locomotive property.

16 “(b) NEW QUALIFIED FREIGHT RAIL INFRASTRUC-  
 17 TURE PROPERTY.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘new qualified  
 19 freight rail infrastructure property’ means qualified  
 20 freight rail infrastructure property—

21 “(A) the construction or erection of which  
 22 is completed by the taxpayer after the date of  
 23 the enactment of this section, or

24 “(B) which is acquired by the taxpayer  
 25 after such date, but only if the original use of  
 26 such property commences with the taxpayer.

1           “(2) EXCEPTION FOR PROPERTY REPLACING  
 2           PROPERTY AT EXISTING LOCATION.—The term ‘new  
 3           qualified freight rail infrastructure property’ does  
 4           not include property which is replacing existing  
 5           property if the property is located at the site of the  
 6           existing property. The preceding sentence shall not  
 7           apply to the replacement or expansion of a bridge or  
 8           tunnel to allow for additional clearance, track, or  
 9           other capacity enhancement where such clearance,  
 10          track, or other capacity enhancement did not pre-  
 11          viously exist.

12           “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-  
 13          TURE PROPERTY.—

14           “(A) IN GENERAL.—The term ‘qualified  
 15          freight rail infrastructure property’ means  
 16          property used in the movement of freight by  
 17          rail—

18                   “(i) the cost of which is chargeable to  
 19                   capital account (determined without regard  
 20                   to section 179F), and

21                   “(ii) which constitutes—

22                           “(I) railroad grading or tunnel  
 23                           bore (as defined in section 168(e)(4)),

24                           “(II) tunnels or subways,

1 “(III) track, including ties, rails,  
2 ballast, or other track material,

3 “(IV) bridges, trestles, culverts,  
4 or other elevated or submerged struc-  
5 tures,

6 “(V) terminals, yards, roadway  
7 buildings, fuel stations, or railroad  
8 wharves or docks, including fixtures  
9 attached thereto, and equipment used  
10 exclusively therein,

11 “(VI) railroad signal, commu-  
12 nication, or other operating systems,  
13 including components of such systems  
14 that must be installed on locomotives  
15 or other rolling stock, or

16 “(VII) intermodal transfer or  
17 transload facilities or terminals, in-  
18 cluding fixtures attached thereto, and  
19 equipment used exclusively therein.

20 “(B) EXCLUSIONS.—The term ‘qualified  
21 freight rail infrastructure property’ shall not in-  
22 clude—

23 “(i) land,

24 “(ii) rolling stock, including loco-  
25 motives, or

1 “(iii) property used predominantly  
 2 outside the United States, except that this  
 3 subparagraph shall not apply to any prop-  
 4 erty described in section 168(g)(4).

5 “(c) NEW QUALIFIED LOCOMOTIVE PROPERTY.—  
 6 For purposes of this section—

7 “(1) IN GENERAL.—The term ‘new qualified lo-  
 8 comotive property’ means qualified locomotive prop-  
 9 erty which is acquired by the taxpayer after the date  
 10 of the enactment of this section, but only if the  
 11 original use of such property commences with the  
 12 taxpayer.

13 “(2) QUALIFIED LOCOMOTIVE PROPERTY.—The  
 14 term ‘qualified locomotive property’ means a loco-  
 15 motive which—

16 “(A) is owned by, or leased to, a taxpayer  
 17 which meets the capacity expansion requirement  
 18 of paragraph (3) for the taxable year in which  
 19 the locomotive is placed in service, and

20 “(B) meets the Environmental Protection  
 21 Agency’s emission standards for locomotives  
 22 and locomotive engines (as in effect on Decem-  
 23 ber 31, 2006).

24 “(3) CAPACITY EXPANSION REQUIREMENT.—

“(A) IN GENERAL.—A taxpayer meets the requirements of this paragraph with respect to any locomotive only if, on the last day of the taxable year in which such locomotive is placed in service, the total horsepower of all locomotives owned by, or leased to, the taxpayer exceeds the total horsepower of all locomotives owned by, or leased to, the taxpayer on the last day of the preceding taxable year. A determination under this paragraph shall be made pursuant to such reports as the Secretary, in consultation with the Surface Transportation Board, may prescribe.

“(B) SPECIAL RULE FOR THE LEASING OF LOCOMOTIVES.—In the case of the leasing of locomotives, total horsepower under subparagraph (A) shall be determined with respect to all locomotives owned by, or leased to, the lessee.

“(d) OTHER DEFINITIONS AND SPECIAL RULES.—

“(1) DEFINITIONS.—For purposes of this section—

“(A) RAILROAD SIGNAL, COMMUNICATION, OR OTHER OPERATING SYSTEM.—The term ‘railroad signal, communication, or other oper-

ating system’ means an appliance, method, device, or system (including hardware and software) which is used to operate a railroad or to improve safety or capacity of railroad operations, including a signal, an interlocker, an automatic train stop, or a train control or cab-signal device.

“(B) INTERMODAL TRANSFER OR TRANSLOAD FACILITY OR TERMINAL.—The term ‘intermodal transfer or transload facility or terminal’ means a facility or terminal primarily utilized in the transfer of freight between rail and any other mode of transportation.

“(2) COORDINATION WITH OTHER CREDITS.—The cost of any property taken into account in determining the credit under this section may not be taken into account in determining a credit under any other provision of this title.

“(3) BASIS ADJUSTMENT.—If a credit is determined under this section with respect to the cost of any qualified freight rail infrastructure property or qualified locomotive property, the basis of such property shall be reduced by the amount of the credit so determined.

1           “(4) SALE-LEASEBACKS.—If qualified freight  
2 rail infrastructure property or qualified locomotive  
3 property is—

4                 “(A) originally placed in service by a per-  
5 son after the date of enactment of this section,  
6 and

7                 “(B) sold and leased back by such person  
8 within 3 months after the property is originally  
9 placed in service (or, in the case of multiple  
10 units of property subject to the same lease,  
11 within 3 months after the date the final unit is  
12 placed in service, so long as the period between  
13 the time the first unit is placed in service and  
14 the time the last unit is placed in service does  
15 not exceed 12 months),

16 such property shall be treated as originally placed in  
17 service not earlier than the date on which such prop-  
18 erty is used under the lease referred to in subpara-  
19 graph (B).

20           “(5) RECAPTURE.—The benefit of any credit  
21 allowable under subsection (a) shall, under regula-  
22 tions prescribed by the Secretary, be recaptured with  
23 respect to any new qualified locomotive property that  
24 is sold or otherwise disposed of by the taxpayer dur-  
25 ing the 5-year period beginning on the date on which



1       such property is originally placed in service. The  
 2       preceding sentence shall not apply to property that  
 3       is sold by and subsequently leased back to the tax-  
 4       payer under paragraph (4).

5       “(e) TERMINATION.—This section shall not apply to  
 6       any property placed in service after December 31, 2012.”.

7       (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-  
 8       tion 38(b) of the Internal Revenue Code of 1986 (relating  
 9       to current year business credit) is amended by striking  
 10      “plus” at the end of paragraph (30), by striking the period  
 11      at the end of paragraph (31) and inserting “, plus”, and  
 12      by adding at the end the following new paragraph:

13               “(32) the freight rail capacity expansion credit  
 14      determined under section 45O.”.

15      (c) COORDINATION WITH SECTION 55.—Section  
 16      38(c)(4)(B) of the Internal Revenue Code of 1986 is  
 17      amended by striking “and” at the end of clause (i), by  
 18      striking the period at the end of clause (ii)(II) and insert-  
 19      ing “, and”, and by adding at the end the following new  
 20      clause:

21                       “(iii) for taxable years beginning after  
 22                       the date of the enactment of this clause,  
 23                       the credit determined under section 45O.”.

24      (d) CLERICAL AMENDMENT.—The table of sections  
 25      for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by in-  
 2 serting after the item relating to section 45N the following  
 3 new item:

“Sec. 45O. Freight rail capacity expansion credit.”.

4 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**  
 5 **PROPERTY.**

6 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 7 ter 1 of the Internal Revenue Code of 1986 (relating to  
 8 itemized deductions for individuals and corporations) is  
 9 amended by inserting after section 179E the following new  
 10 section:

11 **“SEC. 179F. ELECTION TO EXPENSE QUALIFIED FREIGHT**  
 12 **RAIL INFRASTRUCTURE PROPERTY.**

13 “(a) ALLOWANCE OF DEDUCTION.—

14 “(1) IN GENERAL.—A taxpayer may elect to  
 15 treat any amount paid or incurred for the acquisi-  
 16 tion, construction, or erection of qualified freight rail  
 17 infrastructure property (as defined in section  
 18 45O(b)(3)) as an amount not chargeable to capital  
 19 account. Any amount so treated shall be allowed as  
 20 a deduction for the taxable year in which such prop-  
 21 erty was placed in service.

22 “(2) COORDINATION WITH CREDIT.—The  
 23 amount to which the election under paragraph (1)  
 24 applies with respect to any property shall be reduced

1 by an amount equal to the amount of any reduction  
 2 in the basis of the property under section 45O(d)(3).

3 “(b) ELECTION.—An election under subsection (a)  
 4 shall be made, with respect to each class of property for  
 5 each taxable year, at such time and in such manner as  
 6 the Secretary may prescribe by regulation. If a taxpayer  
 7 makes such an election with respect to any class of prop-  
 8 erty for any taxable year, the election shall apply to all  
 9 qualified freight rail infrastructure property in such class  
 10 placed in service during such taxable year. An election  
 11 under this section shall not affect the character of any  
 12 property for the purposes of section 45O.

13 “(c) DEDUCTION ALLOWED IN COMPUTING MINIMUM  
 14 TAX.—For purposes of determining alternative minimum  
 15 taxable income under section 55, the deduction under sub-  
 16 section (a) for qualified freight rail infrastructure property  
 17 shall be determined under this section without regard to  
 18 any adjustment under section 56.

19 “(d) TERMINATION.—This section shall not apply to  
 20 any property placed in service after December 31, 2012.”.

21 (b) DEDUCTION FOR CAPITAL EXPENDITURES.—  
 22 Section 263(a)(1) of the Internal Revenue Code of 1986  
 23 (relating to capital expenditures) is amended by striking  
 24 “or” at the end of subparagraph (K), by striking the pe-

1 riod at the end of subparagraph (L) and inserting “, or”  
 2 and by adding at the end the following new subparagraph:

3 “(M) expenditures for which a deduction is  
 4 allowed under section 179F.”.

5 (c) TECHNICAL AND CLERICAL AMENDMENTS.—

6 (1) Section 312(k)(3)(B) of the Internal Rev-  
 7 enue Code of 1986 is amended by striking “or  
 8 179E” each place it appears in the text or heading  
 9 thereof and inserting “179E, or 179F”.

10 (2) Paragraphs (2)(C) and (3)(C) of section  
 11 1245(a) of such Code are each amended by inserting  
 12 “179F,” after “179E,”.

13 (3) The table of sections for part VI of sub-  
 14 chapter B of chapter 1 of such Code is amended by  
 15 inserting after the item relating to section 179E the  
 16 following new item:

“Sec. 179F. Election to expense qualified freight rail infrastructure property.”.

17 **SEC. 4. EFFECTIVE DATE.**

18 The amendments made by sections 2 and 3 shall  
 19 apply to property placed in service after December 31,  
 20 2007.

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