

111TH CONGRESS
2D SESSION

S. 3749

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.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. CONRAD (for himself and Mr. ENSIGN) introduced the following bill;
which was read twice and referred to the Committee on Finance

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 2010”.

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. 45S. 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) 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 (or in the
 22 case of bridges and tunnels, any eligible bridge
 23 or tunnel replacement or expansion pursuant to
 24 paragraph (2)) of which is completed after the
 25 effective date of this section, or

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

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

16 “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-
17 TURE PROPERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
19 freight rail infrastructure property’ means
20 property, whether or not owned by a railroad,
21 used in the movement of freight by rail—

22 “(i) the cost of which is chargeable to
23 capital account (determined without regard
24 to section 179F), and

25 “(ii) which constitutes—

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

3 “(II) tunnels or subways,

4 “(III) track, including ties, rails,
5 ballast, or other track material,

6 “(IV) bridges, trestles, culverts,
7 or other elevated or submerged struc-
8 tures,

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

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

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

23 “(B) EXCLUSIONS.—The term ‘qualified
24 freight rail infrastructure property’ shall not in-
25 clude—

1 “(i) land,

2 “(ii) rolling stock, including loco-
3 motives, or

4 “(iii) property used predominantly
5 outside the United States, except that this
6 clause shall not apply to any property de-
7 scribed in section 168(g)(4).

8 “(c) QUALIFIED LOCOMOTIVE PROPERTY.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the term ‘qualified locomotive property’ means
11 a locomotive, whether or not owned by a railroad,
12 which—

13 “(A) is acquired by the taxpayer after the
14 effective date of this section, but only if the
15 original use of such property commences with
16 the taxpayer,

17 “(B) is owned by, or leased to, a taxpayer
18 which meets the capacity expansion requirement
19 of paragraph (2) for the taxable year in which
20 the locomotive is placed in service, and

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

1 “(2) CAPACITY EXPANSION REQUIREMENT.—A
 2 taxpayer meets the requirements of this paragraph
 3 with respect to any locomotive only if, on the last
 4 day of the taxable year in which such locomotive is
 5 placed in service, the total horsepower of all loco-
 6 motives owned by, or leased to, the taxpayer exceeds
 7 the total horsepower of all locomotives owned by, or
 8 leased to, the taxpayer on the last day of the pre-
 9 ceding taxable year. A determination under this
 10 paragraph shall be made pursuant to such reports as
 11 the Secretary, in consultation with the Surface
 12 Transportation Board, may prescribe.

13 “(3) SPECIAL RULE FOR THE LEASING OF LO-
 14 COMOTIVES.—In the case of the leasing of loco-
 15 motives, total horsepower under paragraph (2) shall
 16 be determined with respect to all locomotives owned
 17 by, or leased to, the lessee.

18 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

19 “(1) DEFINITIONS.—For purposes of this sec-
 20 tion—

21 “(A) RAILROAD SIGNAL, COMMUNICATION,
 22 OR OTHER OPERATING SYSTEM.—The term
 23 ‘railroad signal, communication, or other oper-
 24 ating system’ means an appliance, method, de-
 25 vice, or system (including hardware and soft-

ware) 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 effective date of this section, and

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

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

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

1 preceding sentence shall not apply to locomotive
 2 property that is sold by and subsequently leased
 3 back to the taxpayer.

4 “(e) TERMINATION.—This section shall not apply to
 5 any property placed in service after December 31, 2015.”.

6 (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-
 7 tion 38(b) of the Internal Revenue Code of 1986 (relating
 8 to current year business credit) is amended by striking
 9 “plus” at the end of paragraph (35), by striking the period
 10 at the end of paragraph (36) and inserting “, plus”, and
 11 by adding at the end the following new paragraph:

12 “(37) the freight rail capacity expansion credit
 13 determined under section 45S.”.

14 (c) COORDINATION WITH SECTION 55.—Section
 15 38(c)(4)(B) of the Internal Revenue Code of 1986 is
 16 amended by striking “and” at the end of clause (viii), by
 17 striking the period at the end of clause (ix) and inserting
 18 “, and”, and by adding at the end the following new
 19 clause:

20 “(x) for taxable years ending after the
 21 effective date of this clause, the credit de-
 22 termined under section 45S.”.

23 (d) CLERICAL AMENDMENT.—The table of sections
 24 for subpart D of part IV of subchapter A of chapter 1
 25 of the Internal Revenue Code of 1986 is amended by in-

1 serting after the item relating to section 45R the following
 2 new item:

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

3 (e) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to property placed in service after
 5 December 31, 2010.

6 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**
 7 **PROPERTY.**

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

13 **“SEC. 179F. ELECTION TO EXPENSE QUALIFIED FREIGHT**
 14 **RAIL INFRASTRUCTURE PROPERTY.**

15 “(a) **ALLOWANCE OF DEDUCTION.**—

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

24 “(2) **COORDINATION WITH CREDIT.**—The
 25 amount to which the election under paragraph (1)

1 applies with respect to any property shall be reduced
2 by an amount equal to the amount of any reduction
3 in the basis of the property under section 45S(d)(3).

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

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

20 “(d) TERMINATION.—This section shall not apply to
21 any property placed in service after December 31, 2015.”

22 (b) DEDUCTION FOR CAPITAL EXPENDITURES.—
23 Section 263(a)(1) of the Internal Revenue Code of 1986
24 (relating to capital expenditures) is amended by striking
25 “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 subtitle A of such Code
 15 is amended by inserting after the item relating to
 16 section 179E the following new item:

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

17 (d) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to property placed in service after
 19 December 31, 2010.

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