

112TH CONGRESS
2D SESSION

H. R. 6120

To amend the Internal Revenue Code of 1986 to allow a credit against
tax for qualified manufacturing facility construction costs.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2012

Mr. HONDA (for himself, Mr. CARNAHAN, Mr. CARNEY, Mr. CICILLINE, Mr. ELLISON, Mr. LARSEN of Washington, Ms. LEE of California, Mr. RYAN of Ohio, and Mr. WELCH) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow a
credit against tax for qualified manufacturing facility
construction costs.

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 “Scaling Up Manufac-
5 turing Act of 2012”.

6 **SEC. 2. CREDIT FOR MANUFACTURING FACILITY COSTS.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 45S. MANUFACTURING FACILITY EXPENDITURES.**

4 “(a) GENERAL RULE.—For purposes of section 38,
5 in the case of an eligible business, the manufacturing facil-
6 ity expenditure credit for any taxable year is an amount
7 equal to 25 percent of the qualified facility construction
8 expenditures of the taxpayer for the taxable year.

9 “(b) ELIGIBLE BUSINESS.—For purposes of this sec-
10 tion—

11 “(1) IN GENERAL.—The term ‘eligible business’
12 means any corporation or partnership—

13 “(A) which is engaged in an active trade or
14 business,

15 “(B) which is headquartered in the United
16 States,

17 “(C) substantially all of the management
18 or administrative activities of which are per-
19 formed in the United States,

20 “(D) which has not (prior to placing into
21 service the manufacturing facility designated
22 for purposes of this section) placed in service a
23 manufacturing facility,

24 “(E) which is a start-up company, and

1 “(F) with respect to which all debt obliga-
2 tions issued by, and equity interests in, have a
3 rating of B minus (or its substantial equivalent)
4 or higher from a credit rating agency registered
5 with the Securities and Exchange Commission
6 as a nationally recognized statistical rating or-
7 ganization (as defined in section 3(a) of the Se-
8 curities Exchange Act of 1934).

9 “(2) START-UP COMPANY.—The term ‘start-up
10 company’ means any corporation or partnership—

11 “(A) which first has both gross receipts
12 and qualified research expenses (as defined in
13 section 41(b)) in a taxable year beginning after
14 December 31, 2012, or

15 “(B) which has both gross receipts and
16 qualified research expenses (as so defined) in
17 fewer than 3 taxable years beginning after De-
18 cember 31, 2012, and before January 1, 2018.

19 “(c) QUALIFIED FACILITY CONSTRUCTION EXPENDI-
20 TURES.—For purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified facility
22 construction expenditures’ means amounts paid or
23 incurred by the taxpayer—

24 “(A) for the construction of a facility (des-
25 ignated for purposes of this section by the tax-

1 payer at such time and in such form and man-
 2 ner as the Secretary shall prescribe) in the
 3 United States to manufacture a qualified prod-
 4 uct (including amounts for professional services
 5 necessary for the planning of such construc-
 6 tion), and

7 “(B) for the purchase of specialized equip-
 8 ment for use at such facility and required for
 9 the manufacture of such product.

10 “(2) QUALIFIED PRODUCT.—The term ‘quali-
 11 fied product’ means any product which, prior to con-
 12 struction of the facility with respect to which a cred-
 13 it is allowed under this section, the taxpayer has
 14 produced and sold to a bona fide purchaser, and
 15 such purchaser has placed such product in service.

16 “(d) SPECIAL RULES.—For purposes of this sec-
 17 tion—

18 “(1) RECAPTURE.—

19 “(A) IN GENERAL.—If, as of the close of
 20 any taxable year, there is a recapture event
 21 with respect to any facility of the taxpayer with
 22 respect to which a credit was allowed under this
 23 section, then the tax of the taxpayer under this
 24 chapter for such taxable year shall be increased
 25 by an amount equal to the product of—

1 “(i) the applicable recapture percent-
2 age, and

3 “(ii) the aggregate decrease in the
4 credits allowed under section 38 for all
5 prior taxable years which would have re-
6 sulted if the qualified facility construction
7 expenditures of the taxpayer described in
8 subsection (c)(1) with respect to such facil-
9 ity had been zero.

10 “(B) APPLICABLE RECAPTURE PERCENT-
11 AGE.—

12 “(i) IN GENERAL.—For purposes of
13 this subsection, the applicable recapture
14 percentage shall be determined in accord-
15 ance with the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	80
Year 3	60
Year 4	40
Year 5	20
Years 6 and thereafter	0.

16 “(ii) YEARS.—For purposes of clause
17 (i), year 1 shall begin on the first day of
18 the taxable year in which the facility with
19 respect to which a credit was allowed
20 under this subsection was placed in service.

“(C) RECAPTURE EVENT.—For purposes of this paragraph—

“(i) IN GENERAL.—A recapture event occurs with respect to any facility if—

“(I) the taxpayer becomes insolvent, or

“(II) the taxpayer disposes of the facility to another person who, at this time of the disposition, is not an eligible business.

“(ii) SPECIAL RULE FOR FACILITIES NOT PLACED IN SERVICE WITHIN 5 YEARS.—In the case of a facility with respect to which a credit is allowed under this section which is not placed in service before the close of the 5th taxable year beginning after the first taxable year for which the credit was so allowed, a recapture event shall be treated as having occurred with respect to such facility in year 1.

“(2) CREDIT MAY BE ASSIGNED.—The amount of qualified facility construction expenditures with respect to a facility which would (but for this paragraph) be taken into account under subsection (a)

1 for any taxable year by any person (hereafter in this
2 paragraph referred to as the ‘initial taxpayer’)—

3 “(A) may be taken into account by any
4 other person to whom such expenditures are as-
5 signed by the initial taxpayer, and

6 “(B) shall not be taken into account by
7 initial taxpayer.

8 Any person to whom such expenditures are assigned
9 under subparagraph (A) shall be treated for pur-
10 poses of this title as the taxpayer with respect to
11 such expenditures.

12 “(3) CONTROLLED GROUP.—All members of the
13 same controlled group of corporations (within the
14 meaning of section 52(a)) and all persons under
15 common control (within the meaning of section
16 52(b)) shall be treated as 1 person for purposes of
17 this section.

18 “(4) PREDECESSOR.—Any reference in this sec-
19 tion to a corporation or partnership shall include a
20 reference to any predecessor of such corporation or
21 partnership.

22 “(5) DENIAL OF DOUBLE BENEFIT.—For pur-
23 poses of this subtitle, if a credit is allowed under
24 this section in connection with any expenditure for

1 any property, the basis of such property shall be re-
2 duced by the amount of the credit so allowed.”.

3 (b) DENIAL OF DOUBLE BENEFIT.—Section 280C of
4 such Code is amended by inserting after subsection (h)
5 the following new subsection:

6 “(i) MANUFACTURING FACILITY EXPENDITURES.—
7 No deduction shall be allowed for that portion of the ex-
8 penses otherwise allowable as a deduction taken into ac-
9 count in determining the credit under section 45S for the
10 taxable year which is equal to the amount of the credit
11 determined for such taxable year under section 45S(a).”.

12 (c) CREDIT TO BE PART OF GENERAL BUSINESS
13 CREDIT.—Subsection (b) of section 38 of such Code is
14 amended by striking “plus” at the end of paragraph (35),
15 by striking the period at the end of paragraph (36) and
16 inserting “, plus”, and by inserting after paragraph (36)
17 the following:

18 “(37) manufacturing facility expenditure credit
19 determined under section 45S(a).”.

20 (d) CONFORMING AMENDMENT.—Subsection (a) of
21 section 1016 of such Code is amended by striking “and”
22 at the end of paragraph (36), by striking the period at
23 the end of paragraph (37) and inserting “, and”, and by
24 adding at the end the following new paragraph:

1 “(38) to the extent provided in section
2 45S(d)(2).”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to amounts paid or incurred after
5 the date of the enactment of this Act.

