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116TH CONGRESS
1ST SESSION

H. R. 2704

To amend the Internal Revenue Code of 1986 to allow for transfers of the renewable electricity production credit and the energy credit.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2019

Mr. BLUMENAUER (for himself and Mr. LAHOOD) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to allow for transfers of the renewable electricity production credit and the energy credit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Renewable Energy Transferability Act’’.

SEC. 2. TRANSFERS OF CREDITS FOR RENEWABLE ELECTRICITY PRODUCTION FACILITIES AND ENERGY PROPERTY.

(a) RENEWABLE ELECTRICITY PRODUCTION CREDIT.—Section 45(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(12) TRANSFER OF CREDIT.—

"(A) IN GENERAL.—If the taxpayer elects to transfer all (or any portion specified in the election) of the credit determined under this section for any taxable year with respect to any qualified facility to an eligible project partner for a specified period, then, the eligible project partner specified in such election (and not the taxpayer) shall be treated for purposes of this title with respect to such credit (or such portion thereof) as the person producing and selling the electricity to which such credit (or portion thereof) relates.

"(B) DEDUCTION FOR PAYMENTS IN CONNECTION WITH TRANSFER.—There shall be allowed as a deduction under part VI of subchapter B an amount equal to the amount paid by a taxpayer as consideration for a transfer described in subparagraph (A).

"(C) ELIGIBLE PROJECT PARTNER.—For purposes of this paragraph, the term 'eligible project partner' means, with respect to any qualified facility, any person who—

"(i) has an ownership interest in such qualified facility,

"(ii) provided equipment for or services in the construction of such qualified facility,

"(iii) provides electric transmission or distribution services for such qualified facility,

"(iv) purchases electricity from such qualified facility pursuant to a contract, or

"(v) provides financing for such qualified facility.

For purposes of clause (v), any amount paid as consideration for a transfer described in subparagraph (A) shall not be treated as financing of a qualified facility.

"(D) TAXABLE YEAR IN WHICH CREDIT TAKEN INTO ACCOUNT.—In the case of any credit (or portion thereof) with respect to which an election is made under subparagraph (A), such credit shall be taken into account in the first taxable year of the eligible project partner ending with, or after, the electing taxpayer's taxable year with respect to which the credit was determined.

"(E) LIMITATIONS ON ELECTION.—

"(i) TIME FOR ELECTION.—An election under this paragraph to transfer any portion of the credit allowed under this paragraph shall be made not later than the due date for the return of tax for the electing taxpayer's taxable year with respect to which the credit was determined

"(ii) NO FURTHER TRANSFERS.—No election may be made under this paragraph by a taxpayer with respect to any portion of the credit allowed under this section which has been previously transferred to such taxpayer under this paragraph.

"(F) TREATMENT OF TRANSFER UNDER PRIVATE USE RULES.—For purposes of section 141(b)(1), any benefit derived by an eligible project partner in connection with an election under this subsection shall not be taken into account as a private business use.

"(G) ADDITIONAL ELECTION REQUIREMENTS.—The Secretary may prescribe such regulations as may be appropriate to carry out the purposes of this paragraph, including—

"(i) rules for determining which persons are eligible project partners with respect to any energy property, and

"(ii) requiring information to be included in an election under subparagraph (A) or imposing additional reporting requirements.".

(b) ENERGY CREDIT.—

(1) IN GENERAL.—Section 48 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(e) TRANSFER OF CREDIT.—

"(1) IN GENERAL.—If the taxpayer elects to transfer all (or any portion specified in the election) of the credit determined under this section for any taxable year with respect to any energy property to an eligible project partner, the eligible project partner specified in such election (and not the taxpayer) shall be treated as the taxpayer for purposes of this title with respect to such credit (or portion thereof).

"(2) DEDUCTION FOR PAYMENTS IN CONNECTION WITH TRANSFER.—There shall be allowed as a deduction under part VI of subchapter B an amount equal to the amount paid by a taxpayer as consideration for a transfer described in paragraph (1).

"(3) ELIGIBLE PROJECT PARTNER.—For purposes of this subparagraph, the term 'eligible project partner' means, with respect to any energy property, any person who—

"(A) has an ownership interest in such energy property,

"(B) provided equipment for or services in the construction of such energy property,

"(C) provides electric transmission or distribution services for such energy property,

"(D) purchases electricity from such qualified facility pursuant to a contract, or

"(E) provides financing for such energy property.

For purposes of subparagraph (E), any amount paid as consideration for a transfer described in paragraph (1) shall not be treated as financing of a qualified facility.

"(4) TAXABLE YEAR IN WHICH CREDIT TAKEN INTO ACCOUNT.—In the case of any credit (or portion thereof) with respect to which an election is made under paragraph (1), such credit shall be taken into account in the first taxable year of the eligible project partner ending with, or after, the electing taxpayer's taxable year with respect to which the credit was determined.

"(5) LIMITATIONS ON ELECTION.—

"(A) TIME FOR ELECTION.—An election under this subsection to transfer any portion of the credit allowed under this section shall be made not later than the due date for the return of tax for the electing taxpayer's taxable year with respect to which the credit was determined.

"(B) NO FURTHER TRANSFERS.—No election may be made under this paragraph by a taxpayer with respect to any portion of the credit allowed under this section which has been previously transferred to such taxpayer under this subsection.

"(6) TREATMENT OF TRANSFER UNDER PRIVATE USE RULES.—For purposes of section 141(b)(1), any benefit derived by an eligible project partner in connection with an election under this subsection shall not be taken into account as a private business use.

"(7) ADDITIONAL ELECTION REQUIREMENTS.—The Secretary may prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including—

"(A) rules for determining which persons are eligible project partners with respect to any energy property, and

"(B) requiring information to be included in an election under paragraph (1) or imposing additional reporting requirements.".

(2) NORMALIZATION RULES.—Section 50(d) of such Code is amended by adding at the end the following: "In the case of any energy property with respect to which an election is made under section 48(e)(1), the rules of the section 46(f) referred to in paragraph (2) shall apply only to the extent of amounts paid in consideration of the transfer to which such election relates."

(c) SPECIAL RULE FOR PROCEEDS OF TRANSFERS FOR MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—Section 501(c)(12)(I) of such Code is amended by striking "45J(e)(1)" and inserting "45(e)(12), 45J(e)(1), or 48(e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

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