

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

A BILL

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

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 “Renewable Energy
5 Transferability Act”.

6 **SEC. 2. TRANSFERS OF CREDITS FOR RENEWABLE ELEC-**
7 **TRICITY PRODUCTION FACILITIES AND EN-**
8 **ERGY PROPERTY.**

9 (a) RENEWABLE ELECTRICITY PRODUCTION CRED-
10 IT.—Section 45(e) of the Internal Revenue Code of 1986

1 is amended by adding at the end the following new para-
2 graph:

3 “(12) TRANSFER OF CREDIT.—

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

16 “(B) DEDUCTION FOR PAYMENTS IN CON-
17 NECTION WITH TRANSFER.—There shall be al-
18 lowed as a deduction under part VI of sub-
19 chapter B an amount equal to the amount paid
20 by a taxpayer as consideration for a transfer
21 described in subparagraph (A).

22 “(C) ELIGIBLE PROJECT PARTNER.—For
23 purposes of this paragraph, the term ‘eligible
24 project partner’ means, with respect to any
25 qualified facility, any person who—

1 “(i) has an ownership interest in such
2 qualified facility,

3 “(ii) provided equipment for or serv-
4 ices in the construction of such qualified
5 facility,

6 “(iii) provides electric transmission or
7 distribution services for such qualified fa-
8 cility,

9 “(iv) purchases electricity from such
10 qualified facility pursuant to a contract, or

11 “(v) provides financing for such quali-
12 fied facility.

13 For purposes of clause (v), any amount paid as
14 consideration for a transfer described in sub-
15 paragraph (A) shall not be treated as financing
16 of a qualified facility.

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

1 “(E) LIMITATIONS ON ELECTION.—

2 “(i) TIME FOR ELECTION.—An elec-
3 tion under this paragraph to transfer any
4 portion of the credit allowed under this
5 paragraph shall be made not later than the
6 due date for the return of tax for the elect-
7 ing taxpayer’s taxable year with respect to
8 which the credit was determined

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

15 “(F) TREATMENT OF TRANSFER UNDER
16 PRIVATE USE RULES.—For purposes of section
17 141(b)(1), any benefit derived by an eligible
18 project partner in connection with an election
19 under this subsection shall not be taken into ac-
20 count as a private business use.

21 “(G) ADDITIONAL ELECTION REQUIRE-
22 MENTS.—The Secretary may prescribe such
23 regulations as may be appropriate to carry out
24 the purposes of this paragraph, including—

1 “(i) rules for determining which per-
2 sons are eligible project partners with re-
3 spect to any energy property, and

4 “(ii) requiring information to be in-
5 cluded in an election under subparagraph
6 (A) or imposing additional reporting re-
7 quirements.”.

8 (b) ENERGY CREDIT.—

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

12 “(e) TRANSFER OF CREDIT.—

13 “(1) IN GENERAL.—If the taxpayer elects to
14 transfer all (or any portion specified in the election)
15 of the credit determined under this section for any
16 taxable year with respect to any energy property to
17 an eligible project partner, the eligible project part-
18 ner specified in such election (and not the taxpayer)
19 shall be treated as the taxpayer for purposes of this
20 title with respect to such credit (or portion thereof).

21 “(2) DEDUCTION FOR PAYMENTS IN CONNEC-
22 TION WITH TRANSFER.—There shall be allowed as a
23 deduction under part VI of subchapter B an amount
24 equal to the amount paid by a taxpayer as consider-
25 ation for a transfer described in paragraph (1).

1 “(3) ELIGIBLE PROJECT PARTNER.—For pur-
 2 poses of this subparagraph, the term ‘eligible project
 3 partner’ means, with respect to any energy property,
 4 any person who—

5 “(A) has an ownership interest in such en-
 6 ergy property,

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

9 “(C) provides electric transmission or dis-
 10 tribution services for such energy property,

11 “(D) purchases electricity from such quali-
 12 fied facility pursuant to a contract, or

13 “(E) provides financing for such energy
 14 property.

15 For purposes of subparagraph (E), any amount paid
 16 as consideration for a transfer described in para-
 17 graph (1) shall not be treated as financing of a
 18 qualified facility.

19 “(4) TAXABLE YEAR IN WHICH CREDIT TAKEN
 20 INTO ACCOUNT.—In the case of any credit (or por-
 21 tion thereof) with respect to which an election is
 22 made under paragraph (1), such credit shall be
 23 taken into account in the first taxable year of the el-
 24 igible project partner ending with, or after, the elect-

1 ing taxpayer's taxable year with respect to which the
2 credit was determined.

3 “(5) LIMITATIONS ON ELECTION.—

4 “(A) TIME FOR ELECTION.—An election
5 under this subsection to transfer any portion of
6 the credit allowed under this section shall be
7 made not later than the due date for the return
8 of tax for the electing taxpayer's taxable year
9 with respect to which the credit was deter-
10 mined.

11 “(B) NO FURTHER TRANSFERS.—No elec-
12 tion may be made under this paragraph by a
13 taxpayer with respect to any portion of the
14 credit allowed under this section which has been
15 previously transferred to such taxpayer under
16 this subsection.

17 “(6) TREATMENT OF TRANSFER UNDER PRI-
18 VATE USE RULES.—For purposes of section
19 141(b)(1), any benefit derived by an eligible project
20 partner in connection with an election under this
21 subsection shall not be taken into account as a pri-
22 vate business use.

23 “(7) ADDITIONAL ELECTION REQUIREMENTS.—

24 The Secretary may prescribe such regulations as

1 may be appropriate to carry out the purposes of this
2 subsection, including—

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

6 “(B) requiring information to be included
7 in an election under paragraph (1) or imposing
8 additional reporting requirements.”.

9 (2) NORMALIZATION RULES.—Section 50(d) of
10 such Code is amended by adding at the end the fol-
11 lowing: “In the case of any energy property with re-
12 spect to which an election is made under section
13 48(e)(1), the rules of the section 46(f) referred to in
14 paragraph (2) shall apply only to the extent of
15 amounts paid in consideration of the transfer to
16 which such election relates.”

17 (c) SPECIAL RULE FOR PROCEEDS OF TRANSFERS
18 FOR MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—
19 Section 501(c)(12)(I) of such Code is amended by striking
20 “45J(e)(1)” and inserting “45(e)(12), 45J(e)(1), or
21 48(e)(1)”.

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

○