

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title I, §112(f), Oct. 3, 2008, 122 Stat. 3824, provided that: “The amendments made by this section [amending this section] shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109-58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§ 48C. Qualifying advanced energy project credit**(a) In general**

For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

(b) Qualified investment**(1) In general**

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

(2) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(3) Limitation

The amount which is treated as the qualified investment for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

(c) Definitions**(1) Qualifying advanced energy project****(A) In general**

The term “qualifying advanced energy project” means a project, any portion of the qualified investment of which is certified by the Secretary under subsection (e) as eligible for a credit under this section—

(i) which re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of—

(I) property designed to be used to produce energy from the sun, water, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

(II) fuel cells, microturbines, or energy storage systems and components,

(III) electric grid modernization equipment or components,

(IV) property designed to capture, remove, use, or sequester carbon oxide emissions,

(V) equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is—

(aa) renewable, or

(bb) low-carbon and low-emission,

(VI) property designed to produce energy conservation technologies (including residential, commercial, and industrial applications),

(VII) light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as—

(aa) technologies, components, or materials for such vehicles, and

(bb) associated charging or refueling infrastructure,

(VIII) hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as well as technologies, components, or materials for such vehicles, or

(IX) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary,

(ii) which re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of—

(I) low- or zero-carbon process heat systems,

(II) carbon capture, transport, utilization and storage systems,

(III) energy efficiency and reduction in waste from industrial processes, or

(IV) any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary, or

(iii) which re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials (as defined in section 7002(a) of the Energy Act of 2020 (30 U.S.C. 1606(a))¹.

(B) Exception

Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

(2) Eligible property

The term “eligible property” means any property—

(A) which is necessary for—

(i) the production or recycling of property described in clause (i) of paragraph (1)(A),

(ii) re-equipping an industrial or manufacturing facility described in clause (ii) of such paragraph, or

(iii) re-equipping, expanding, or establishing an industrial facility described in clause (iii) of such paragraph,

(B) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural compo-

¹ So in original. Probably should be followed by a closing parenthesis.

nents), but only if such property is used as an integral part of the qualified investment credit facility, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(d) Qualifying advanced energy project program

(1) Establishment

(A) In general

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed \$2,300,000,000.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time to meet criteria for certification

Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

(C) Period of issuance

An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

(3) Selection criteria

In determining which qualifying advanced energy projects to certify under this section, the Secretary—

(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

(B) shall take into consideration which projects—

(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

(v) have the shortest project time from certification to completion.

(4) Review and redistribution

(A) Review

Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) Redistribution

The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Additional allocations

(1) In general

Not later than 180 days after the date of enactment of this subsection, the Secretary shall establish a program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(2) Limitation

The total amount of credits which may be allocated under the program established under paragraph (1) shall not exceed \$10,000,000,000, of which not greater than \$6,000,000,000 may be allocated to qualified investments which are not located within a census tract which—

(A) is described in clause (iii) of section 45(b)(11)(B), and

(B) prior to the date of enactment of this subsection, had no project which received a certification and allocation of credits under subsection (d).

(3) Certifications

(A) Application requirement

Each applicant for certification under this subsection shall submit an application at such time and containing such information as the Secretary may require.

(B) Time to meet criteria for certification

Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the

requirements of the certification have been met.

(C) Period of issuance

An applicant which receives a certification shall have 2 years from the date of issuance of the certification in order to place the project in service and to notify the Secretary that such project has been so placed in service, and if such project is not placed in service by that time period, then the certification shall no longer be valid. If any certification is revoked under this subparagraph, the amount of the limitation under paragraph (2) shall be increased by the amount of the credit with respect to such revoked certification.

(D) Location of project

In the case of an applicant which receives a certification, if the Secretary determines that the project has been placed in service at a location which is materially different than the location specified in the application for such project, the certification shall no longer be valid.

(4) Credit rate conditioned upon wage and apprenticeship requirements

(A) Base rate

For purposes of allocations under this subsection, the amount of the credit determined under subsection (a) shall be determined by substituting “6 percent” for “30 percent”.

(B) Alternative rate

In the case of any project which satisfies the requirements of paragraphs (5)(A) and (6), subparagraph (A) shall not apply.

(5) Prevailing wage requirements

(A) In general

The requirements described in this subparagraph with respect to a project are that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(B) Correction and penalty related to failure to satisfy wage requirements

Rules similar to the rules of section 45(b)(7)(B) shall apply.

(6) Apprenticeship requirements

Rules similar to the rules of section 45(b)(8) shall apply.

(7) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(f) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a

credit is allowed under section 48, 48A, 48B, 48E, 45Q, or 45V.

(Added Pub. L. 111-5, div. B, title I, §1302(b), Feb. 17, 2009, 123 Stat. 345; amended Pub. L. 113-295, div. A, title II, §§209(g), 221(a)(2)(C), Dec. 19, 2014, 128 Stat. 4029, 4037; Pub. L. 117-169, title I, §13501(a)-(d), Aug. 16, 2022, 136 Stat. 1969-1971.)

Editorial Notes

REFERENCES IN TEXT

Subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990), referred to in subsec. (b)(2), means section 46(c)(4) and (d) as in effect before enactment of Pub. L. 101-508, which amended section 46 generally.

The date of enactment of this section, referred to in subsec. (d)(1)(A), (4)(A), is the date of enactment of Pub. L. 111-5, which was approved Feb. 17, 2009.

The date of enactment of this subsection, referred to in subsec. (e)(1), (2)(B), is the date of enactment of Pub. L. 117-169, which was approved Aug. 16, 2022.

AMENDMENTS

2022—Subsec. (c)(1)(A). Pub. L. 117-169, §13501(b)(1), inserted “, any portion of the qualified investment of which is certified by the Secretary under subsection (e) as eligible for a credit under this section” after “means a project” in introductory provisions.

Subsec. (c)(1)(A)(i). Pub. L. 117-169, §13501(b)(2)(A), substituted “an industrial or manufacturing facility for the production or recycling of” for “a manufacturing facility for the production of” in introductory provisions.

Subsec. (c)(1)(A)(i)(I). Pub. L. 117-169, §13501(b)(2)(B), inserted “water,” after “sun,”.

Subsec. (c)(1)(A)(i)(II). Pub. L. 117-169, §13501(b)(2)(C), substituted “energy storage systems and components” for “an energy storage system for use with electric or hybrid-electric motor vehicles”.

Subsec. (c)(1)(A)(i)(III). Pub. L. 117-169, §13501(b)(2)(D), substituted “grid modernization equipment or components” for “grids to support the transmission of intermittent sources of renewable energy, including storage of such energy”.

Subsec. (c)(1)(A)(i)(IV). Pub. L. 117-169, §13501(b)(2)(E), substituted “, remove, use, or sequester carbon oxide emissions” for “and sequester carbon dioxide emissions”.

Subsec. (c)(1)(A)(i)(V). Pub. L. 117-169, §13501(b)(2)(F), added subcl. (V) and struck out former subcl. (V) which read as follows: “property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),”.

Subsec. (c)(1)(A)(i)(VI) to (IX). Pub. L. 117-169, §13501(b)(2)(G)-(J), added subcls. (VI) to (VIII), redesignated former subcl. (VII) as (IX), struck out “and” at end of subcl. (IX), and struck out former subcl. (VI) which read as follows: “new qualified plug-in electric drive motor vehicles (as defined by section 30D) or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or”.

Subsec. (c)(1)(A)(ii), (iii). Pub. L. 117-169, §13501(b)(3), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: “any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.”

Subsec. (c)(2)(A). Pub. L. 117-169, §13501(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “which is necessary for the production of property described in paragraph (1)(A)(i),”.

Subsec. (e). Pub. L. 117-169, §13501(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 117-169, §13501(a), (d), redesignated subsec. (e) as (f) and substituted “48B, 48E, 45Q, or 45V” for “or 48B”.

2014—Subsec. (b)(3). Pub. L. 113–295, §209(g), inserted “as the qualified investment” after “The amount which is treated”.

Subsec. (c)(1)(A)(i)(VI). Pub. L. 113–295, §221(a)(2)(C), struck out “, qualified plug-in electric vehicles (as defined by section 30(d)),” before “or components”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–169, title I, §13501(e), Aug. 16, 2022, 136 Stat. 1971, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2023.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 209(g) of Pub. L. 113–295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111–5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113–295, set out as a note under section 24 of this title.

Amendment by section 221(a)(2)(C) of Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 46 of this title.

§ 48D. Advanced manufacturing investment credit

(a) Establishment of credit

For purposes of section 46, the advanced manufacturing investment credit for any taxable year is an amount equal to 25 percent of the qualified investment for such taxable year with respect to any advanced manufacturing facility of an eligible taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment with respect to any advanced manufacturing facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of an advanced manufacturing facility.

(2) Qualified property

(A) In general

For purposes of this subsection, the term “qualified property” means property—

- (i) which is tangible property,
- (ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,
- (iii) which is—
 - (I) constructed, reconstructed, or erected by the taxpayer, or
 - (II) acquired by the taxpayer if the original use of such property commences with the taxpayer, and
- (iv) which is integral to the operation of the advanced manufacturing facility.

(B) Buildings and structural components

(i) In general

The term “qualified property” includes any building or its structural components

which otherwise satisfy the requirements under subparagraph (A).

(ii) Exception

Clause (i) shall not apply with respect to a building or portion of a building used for offices, administrative services, or other functions unrelated to manufacturing.

(3) Advanced manufacturing facility

For purposes of this section, the term “advanced manufacturing facility” means a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.

(4) Coordination with rehabilitation credit

The qualified investment with respect to any advanced manufacturing facility for any taxable year shall not include that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)).

(5) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Eligible taxpayer

For purposes of this section, the term “eligible taxpayer” means any taxpayer which—

(1) is not a foreign entity of concern (as defined in section 9901(6)¹ of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021), and

(2) has not made an applicable transaction (as defined in section 50(a)) during the taxable year.

(d) Elective payment

(1) In general

Except as otherwise provided in paragraph (2)(A), in the case of a taxpayer making an election (at such time and in such manner as the Secretary may provide) under this subsection with respect to the credit determined under subsection (a) with respect to such taxpayer, such taxpayer shall be treated as making a payment against the tax imposed by subtitle A (for the taxable year with respect to which such credit was determined) equal to the amount of such credit.

(2) Special rules

For purposes of this subsection—

(A) Application to partnerships and S corporations

(i) In general

In the case of the credit determined under subsection (a) with respect to any property held directly by a partnership or S corporation, any election under paragraph (1) shall be made by such partnership or S corporation. If such partnership or S corporation makes an election under such paragraph (in such manner as the

¹ See References in Text note below.