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 Secretary may provide) with respect to such credit—

(I) the Secretary shall make a payment to such partnership or S corporation equal to the amount of such credit,

(II) paragraph (3) shall be applied with respect to such credit before determining any partner's distributive share, or shareholder's pro rata share, of such credit,

(III) any amount with respect to which the election in paragraph (1) is made shall be treated as tax exempt income for purposes of sections 705 and 1366, and

(IV) a partner's distributive share of such tax exempt income shall be based

[1] See References in Text note below.

on such partner's distributive share of the otherwise applicable credit for each taxable year.

(ii) Coordination with application at partner or shareholder level

In the case of any property held directly by a partnership or S corporation, no election by any partner or shareholder shall be allowed under paragraph (1) with respect to any credit determined under subsection (a) with respect to such property.

(B) Elections

Any election under paragraph (1) shall be made not later than the due date (including extensions of time) for the return of tax for the taxable year for which the election is made, but in no event earlier than 270 days after the date of the enactment of this section. Any such election, once made, shall be irrevocable. Except as otherwise provided in this subparagraph, any election under paragraph (1) shall apply with respect to any credit for the taxable year for which the election is made.

(C) Timing

The payment described in paragraph (1) shall be treated as made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed.

(D) Treatment of payments to partnerships and s corporations

For purposes of section 1324 of title 31, United States Code, the payments under subparagraph (A)(i)(I) shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(E) Additional information

As a condition of, and prior to, any amount being treated as a payment which is made by the taxpayer under paragraph (1) or any payment being made pursuant to subparagraph (A), the Secretary may require such information or registration as the Secretary deems necessary or appropriate for purposes of preventing duplication, fraud, improper payments, or excessive payments under this section.

(F) Excessive payment

(i) In general

In the case of any amount treated as a payment which is made by the taxpayer under paragraph (1), or any payment made pursuant to subparagraph (A), which the Secretary determines constitutes an excessive payment, the tax imposed on such taxpayer by chapter 1 for the taxable year in which such determination is made shall be increased by an amount equal to the sum of—

(I) the amount of such excessive payment, plus

(II) an amount equal to 20 percent of such excessive payment.

(ii) Reasonable cause

Clause (i)(II) shall not apply if the taxpayer demonstrates to the satisfaction of the Secretary that the excessive payment resulted from reasonable cause.

(iii) Excessive payment defined

For purposes of this subparagraph, the term ''excessive payment'' means, with respect to property for which an election is made under this subsection for any taxable year, an amount equal to the excess of—

(I) the amount treated as a payment which is made by the taxpayer under paragraph (1), or the amount of the payment made pursuant to subparagraph (A), with respect to such property for such taxable year, over

(II) the amount of the credit which, without application of this subsection, would be otherwise allowable (determined without regard to section 38(c)) under subsection (a) with respect to such property for such taxable year.

(3) Denial of double benefit

In the case of a taxpayer making an election under this subsection with respect to the credit determined under subsection (a), such credit shall be reduced to zero and shall, for any other purposes under this title, be deemed to have been allowed to the taxpayer for such taxable year.

(4) Mirror code possessions

In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this subsection shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession unless such possession elects to have this subsection be so treated.

(5) Basis reduction and recapture

Rules similar to the rules of subsections (a) and (c) of section 50 shall apply with respect to—

(A) any amount treated as a payment which is made by the taxpayer under paragraph (1), and

(B) any payment made pursuant to paragraph (2)(A).

(6) Regulations

The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this subsection, including—

(A) regulations or other guidance providing rules for determining a partner's distributive share of the tax exempt income described in paragraph (2)(A)(i)(III), and

(B) guidance to ensure that the amount of the payment or deemed payment made under this subsection is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

(e) Termination of credit

The credit allowed under this section shall not apply to property the construction of which begins after December 31, 2026.

(Added Pub. L. 117–167, div. A, §107(a), Aug. 9, 2022, 136 Stat. 1393.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 9901(6) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, referred to in subsec. (c)(1), means section 9901(6) of Pub. L. 116–283, but probably should be a reference to section 9901(8) of the Act, which defines ''foreign entity of concern'' and which is classified to section 4651(8) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (d)(2)(B), is the date of enactment of Pub. L. 117–167, which was approved Aug. 9. 2022.

PRIOR PROVISIONS

A prior section 48D, added Pub. L. 111–148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877, provided for a qualifying therapeutic discovery project credit, prior to repeal by Pub. L. 115–141, div. U, title IV, §401(d)(3)(A), Mar. 23, 2018, 132 Stat. 1209.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2022, and, for any property the construction of which begins prior to Jan. 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after Aug. 9, 2022, see section 107(f) of Pub. L. 117–167, set out as an Effective Date of 2022 Amendment note under section 905 of Title 2, The Congress.

§ 48E. Clean electricity investment credit

(a) Investment credit for qualified property

(1) In general

For purposes of section 46, the clean electricity investment credit for any taxable year is an amount equal to the applicable percentage of the qualified investment for such taxable year with respect to—

(A) any qualified facility, and

(B) any energy storage technology.

(2) Applicable percentage

(A) Qualified facilities

Subject to paragraph (3)—

(i) Base rate

In the case of any qualified facility which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

(ii) Alternative rate

In the case of any qualified facility—

(I) with a maximum net output of less than 1 megawatt (as measured in alternating current),

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such facility, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

(B) Energy storage technology

Subject to paragraph (3)—

(i) Base rate

In the case of any energy storage technology which is not described in subclause (I) or (II) of clause (ii) and does not satisfy the requirements described in subclause (III) of such clause, the applicable percentage shall be 6 percent.

(ii) Alternative rate

In the case of any energy storage technology—

(I) with a capacity of less than 1 megawatt,

(II) the construction of which begins prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of paragraphs (3) and (4) of subsection (d), or

(III) which—

(aa) satisfies the requirements of subsection (d)(3), and

(bb) with respect to the construction of such property, satisfies the requirements of subsection (d)(4),

the applicable percentage shall be 30 percent.

(3) Increase in credit rate in certain cases

(A) Energy communities

(i) In general

In the case of any qualified investment with respect to a qualified facility or with respect to energy storage technology which is placed in service within an energy community (as defined in section 45(b)(11)(B)), for purposes of applying paragraph (2) with respect to such property or investment, the applicable percentage shall be increased by the applicable credit rate increase.

(ii) Applicable credit rate increase

For purposes of clause (i), the applicable credit rate increase shall be an amount equal to—

(I) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(i) or with respect to energy storage technology described in paragraph (2)(B)(i), 2 percentage points, and

(II) in the case of any qualified investment with respect to a qualified facility described in paragraph (2)(A)(ii) or with respect to energy storage technology described in paragraph (2)(B)(ii), 10 percentage points.

(B) Domestic content

Rules similar to the rules of section 48(a)(12) shall apply.