

111TH CONGRESS }
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HOUSE OF REPRESENTATIVES }

REPORT
111-16

MAKING SUPPLEMENTAL APPROPRIATIONS FOR JOB PRESERVA-
TION AND CREATION, INFRASTRUCTURE INVESTMENT, ENERGY
EFFICIENCY AND SCIENCE, ASSISTANCE TO THE UNEMPLOYED,
AND STATE AND LOCAL FISCAL STABILIZATION, FOR THE FIS-
CAL YEAR ENDING SEPTEMBER 30, 2009, AND FOR OTHER PUR-
POSES

CONFERENCE REPORT

TO ACCOMPANY

H.R. 1



FEBRUARY 12, 2009.—Ordered to be printed

parking is excludable from income. Up to \$120 (for 2009) per month of employer-provided transit and vanpool benefits are excludable from gross income. These amounts are indexed annually for inflation, rounded to the nearest multiple of \$5. No amount is includible in the income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits. Qualified transportation fringe benefits also include a cash reimbursement by an employer to an employee. However, in the case of transit passes, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the monthly exclusion for employer-provided transit and vanpool benefits to the same level as the exclusion for employer-provided parking.

Effective date.—The provision is effective for months beginning on or after date of enactment. The proposal does not apply to tax years beginning after December 31, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

16. Credit for investment in advanced energy property (sec. 1302 of the Senate amendment, sec. 1302 of the conference agreement, and new sec. 48C of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities.²¹³ Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources.

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.²¹⁴

In addition to these, numerous other credits are available to taxpayers to encourage renewable energy production and energy conservation, including, among others, credits for certain biofuels,

²¹³Sec. 45. In addition to the electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

²¹⁴Sec. 48.

plug-in electric vehicles, and energy efficient appliances, and for improvements to heating, air conditioning, and insulation.

No credit is specifically designed under present law to encourage the development of a domestic manufacturing base to support the industries described above.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a 30 percent credit for investment in qualified property used in a qualified advanced energy manufacturing project. A qualified advanced energy project is a project that re-equips, expands, or establishes a manufacturing facility for the production: (1) property designed to be used to produce energy from the sun, wind, or geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources; (2) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles; (3) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy; (4) property designed to capture and sequester carbon dioxide; (5) property designed to refine or blend renewable fuels (but not fossil fuels) or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies; or (6) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.

Qualified property must be depreciable (or amortizable) property used in a qualified advanced energy project. Qualified property does not include property designed to manufacture equipment for use in the refining or blending of any transportation fuel other than renewable fuels. The basis of qualified property must be reduced by the amount of credit received.

Credits are available only for projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. The Secretary of Treasury must establish a certification program no later than 180 days after date of enactment, and may allocate up to \$2 billion in credits.

In selecting projects, the Secretary may consider only those projects where there is a reasonable expectation of commercial viability. In addition, the Secretary must consider other selection criteria, including which projects (1) will provide the greatest domestic job creation; (2) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases; (3) have the greatest readiness for commercial employment, replication, and further commercial use in the United States; (4) will provide the greatest benefit in terms of newness in the commercial market; (5) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission; and (6) have the shortest project time from certification to completion.

Each project application must be submitted during the three-year period beginning on the date such certification program is established. An applicant for certification has two years from the

date the Secretary accepts the application to provide the Secretary with evidence that the requirements for certification have been met. Upon certification, the applicant has five years from the date of issuance of the certification to place the project in service. Not later than six years after the date of enactment of the credit, the Secretary is required to review the credit allocations and redistribute any credits that were not used either because of a revoked certification or because of an insufficient quantity of credit applications.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications. The conference agreement increases by \$300 million (to \$2.3 billion) the amount of credits that may be allocated by the Secretary. The conference agreement expands the list of qualifying advance energy projects to include projects designed to manufacture any new qualified plug-in electric drive motor vehicle (as defined by section 30D(c)), any specified vehicle (as defined by section 30D(f)(2)), or any component which is designed specifically for use with such vehicles, including any electric motor, generator, or power control unit. The conference agreement also replaces the third and fourth project selection criteria with a requirement that the Secretary, in addition to the remaining criteria, consider projects that have the greatest potential for technological innovation and commercial deployment.

In addition, the conference agreement shortens to two years the period during which project applications may be submitted, shortens to one year the period during which the project applicants must provide evidence that the certification requirements have been met, and shortens to three years the period during which certified projects must be placed in service. The conference agreement also shortens the period after which the Secretary must review the credit allocations from six to four years. Finally, the conference agreement clarifies that only tangible personal property and other tangible property (not including a building or its structural components) is credit-eligible.

17. Incentives for manufacturing facilities producing plug-in electric drive motor vehicles and components (sec. 1303 of the Senate amendment)

PRESENT LAW

Depreciation rules

A taxpayer is allowed to recover through annual depreciation deductions the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from 3 to 25 years. The depreciation methods generally ap-