

116TH CONGRESS
1ST SESSION

S. 1627

To amend the Internal Revenue Code of 1986 to extend and modify the section 45 credit for refined coal from steel industry fuel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 22), 2019

Mrs. CAPITO (for herself, Mr. BROWN, Mr. PORTMAN, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to extend and modify the section 45 credit for refined coal from steel industry fuel, and for other purposes.

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 “Steel Industry Preser-
5 vation Act”.

6 **SEC. 2. EXTENSION AND MODIFICATION OF CREDIT FOR**
7 **STEEL INDUSTRY FUEL.**

8 (a) CREDIT PERIOD.—

1 (1) IN GENERAL.—Subclause (II) of section
2 45(e)(8)(D)(ii) of the Internal Revenue Code of
3 1986 is amended to read as follows:

4 “(II) CREDIT PERIOD.—In lieu
5 of the 10-year period referred to in
6 clauses (i) and (ii)(II) of subpara-
7 graph (A), the credit period shall be
8 the period beginning on the first date
9 that the facility first produces steel
10 industry fuel that is sold to an unre-
11 lated person after the date of the en-
12 actment of the Steel Industry Preser-
13 vation Act, and ending 10 years after
14 such first date.”.

15 (2) CONFORMING AMENDMENT.—Section
16 45(e)(8)(D) of such Code is amended by striking
17 clause (iii) and by redesignating clause (iv) as clause
18 (iii).

19 (b) EXTENSION OF PLACED-IN-SERVICE DATE.—
20 Subparagraph (A) of section 45(d)(8) of the Internal Rev-
21 enue Code of 1986 is amended—

22 (1) by striking “(or any modification to a facil-
23 ity)”;

24 (2) by striking “placed in service before” and
25 inserting “placed in service—

1 “(i) before”;

2 (3) by striking “and” at the end and inserting
3 “or”; and

4 (4) by adding at the end the following new
5 clause:

6 “(ii) after the date of the enactment
7 of this clause and before the date that is
8 18 months after such date, and”.

9 (c) CLARIFICATIONS.—

10 (1) STEEL INDUSTRY FUEL.—Subclause (I) of
11 section 45(c)(7)(C)(i) of the Internal Revenue Code
12 of 1986 is amended by inserting “, or a blend of
13 coal and petroleum coke, or other coke feedstock”
14 after “on coal”.

15 (2) OWNERSHIP INTEREST.—Section 45(d)(8)
16 of such Code is amended by adding at the end the
17 following new flush sentence:

18 “With respect to a facility producing steel industry
19 fuel, no person (including a ground lessor, customer,
20 supplier, or technology licensor) shall be treated as
21 having an ownership interest in the facility or as
22 otherwise entitled to the credit allowable under this
23 section with respect to such facility solely because
24 such person’s rent, license fee, or other entitlement
25 to net payments from the owner of such facility is

1 measured by a fixed dollar amount or a fixed
 2 amount per ton, or otherwise determined without re-
 3 gard to the profit or loss of such facility.”.

4 (3) PRODUCTION AND SALE.—Subparagraph
 5 (D) of section 45(e)(8) of such Code, as amended by
 6 subsection (a)(2), is amended by redesignating
 7 clause (iii) as clause (iv) and by inserting after
 8 clause (ii) the following new clause:

9 “(iii) PRODUCTION AND SALE.—The
 10 owner of a facility producing steel industry
 11 fuel shall be treated as producing and sell-
 12 ing steel industry fuel where that owner
 13 manufactures such steel industry fuel from
 14 coal, a blend of coal and petroleum coke,
 15 or other coke feedstock to which it has
 16 title. The sale of such steel industry fuel
 17 by the owner of the facility to a person
 18 who is not the owner of the facility shall
 19 not fail to qualify as a sale to an unrelated
 20 person solely because such purchaser may
 21 also be a ground lessor, supplier, or cus-
 22 tomer.”.

23 (d) ELECTION TO INCREASE CREDIT IN LIEU OF
 24 STEEL INDUSTRY FUEL DEDUCTIONS.—Paragraph (8) of

1 section 45(e) is amended by adding at the end the fol-
2 lowing new subparagraph:

3 “(E) ELECTION FOR INCREASED CREDIT
4 IN LIEU OF DEDUCTIONS FOR STEEL INDUSTRY
5 FUEL.—In the case of a taxpayer who produces
6 steel industry fuel—

7 “(i) IN GENERAL.—At the election of
8 the taxpayer—

9 “(I) no deduction shall be al-
10 lowed with respect to expenses made
11 in connection with the production and
12 sale of steel industry fuel for such
13 taxable year which are otherwise de-
14 ductible under this chapter (deter-
15 mined without regard to this subpara-
16 graph),

17 “(II) no expense made in connec-
18 tion with the production of and sale of
19 steel industry fuel which is otherwise
20 chargeable to capital account in such
21 taxable year shall be so charged, and

22 “(III) the credit determined
23 under this section (without regard to
24 this subparagraph) for such taxable
25 year shall be increased by an amount

1 equal to the product of the sum of the
 2 amounts to which subclauses (I) and
 3 (II) apply and the maximum rate of
 4 tax applicable under section 1 or
 5 11(b), as applicable to the taxpayer in
 6 such taxable year.

7 “(ii) APPLICATION TO PARTNERSHIPS
 8 AND S CORPORATIONS.—In the case of a
 9 partnership or S corporation, the election
 10 shall be made at the partnership or S cor-
 11 poration level.

12 “(iii) ELECTION.—An election under
 13 this subparagraph for any taxable year
 14 shall be made not later than the time for
 15 filing the return of tax for such year (in-
 16 cluding extensions), in such manner as the
 17 Secretary may prescribe. Such an election,
 18 once made, shall be irrevocable.”.

19 (e) SPECIFIED CREDIT FOR PURPOSES OF ALTER-
 20 NATIVE MINIMUM TAX EXCLUSION.—Subclause (II) of
 21 section 38(c)(4)(B)(iv) of the Internal Revenue Code of
 22 1986 is amended by inserting “(in the case of a refined
 23 coal production facility producing steel industry fuel, dur-
 24 ing the credit period set forth in section
 25 45(e)(8)(D)(ii)(II))” after “service”.

1 (f) APPLICATION OF CERTAIN RULES TO STEEL IN-
2 DUSTRY FUEL.—

3 (1) ACTIVITY NOT ENGAGED IN FOR PROFIT.—

4 Section 183 of the Internal Revenue Code of 1986
5 is amended by adding at the end the following new
6 subsection:

7 “(f) EXCEPTION.—This section shall not apply to any
8 deduction with respect to the production of steel industry
9 fuel (as defined in section 45(c)(7)(C)).”.

10 (2) APPLICATION OF ECONOMIC SUBSTANCE
11 DOCTRINE.—

12 (A) IN GENERAL.—Subsection (o) of sec-
13 tion 7701 of the Internal Revenue Code of 1986
14 is amended by adding at the end the following
15 new paragraph:

16 “(6) NON-APPLICATION TO STEEL INDUSTRY
17 FUEL.—The economic substance doctrine shall not
18 apply to any transaction to the extent such trans-
19 action relates to steel industry fuel (as defined in
20 section 45(c)(7)(C)).”.

21 (B) CONFORMING AMENDMENT.—Para-
22 graph (5)(C) of section 7701(o) of such Code is
23 amended by striking “The determination” and
24 inserting “Except as provided in paragraph (6),
25 the determination”.

1 (g) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to fuel produced and sold after the date
5 of the enactment of this Act, in taxable years ending
6 after such date.

7 (2) APPLICATION OF ECONOMIC SUBSTANCE
8 RULES.—The amendments made by subsection (f)(2)
9 shall apply to transactions entered into after the
10 date of the enactment of this Act.

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