

117TH CONGRESS
1ST SESSION

S. 2107

To amend the Internal Revenue Code of 1986 to establish the semiconductor manufacturing investment credit.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2021

Mr. WYDEN (for himself, Mr. CRAPO, Mr. WARNER, Mr. CORNYN, Ms. STABENOW, and Mr. DAINES) 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 establish the semiconductor manufacturing investment 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 “Facilitating American-
5 Built Semiconductors Act” or the “FABS Act”.

6 **SEC. 2. SEMICONDUCTOR MANUFACTURING INVESTMENT**
7 **CREDIT.**

8 (a) IN GENERAL.—Subpart E of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 48C the fol-
 2 lowing new section:

3 **“SEC. 48D. SEMICONDUCTOR MANUFACTURING INVEST-**
 4 **MENT CREDIT.**

5 “(a) IN GENERAL.—For purposes of section 46, the
 6 semiconductor manufacturing investment credit for any
 7 taxable year is an amount equal to the sum of—

8 “(1) 25 percent of the qualified investment for
 9 such taxable year with respect to any semiconductor
 10 manufacturing facility, and

11 “(2) 25 percent of the qualified investment for
 12 such taxable year with respect to any semiconductor
 13 manufacturing property.

14 “(b) QUALIFIED INVESTMENT WITH RESPECT TO
 15 SEMICONDUCTOR MANUFACTURING FACILITIES.—

16 “(1) IN GENERAL.—For purposes of subsection
 17 (a)(1), the qualified investment with respect to any
 18 semiconductor manufacturing facility for any taxable
 19 year is the basis of any qualified property placed in
 20 service by the taxpayer during such taxable year
 21 which is part of a semiconductor manufacturing fa-
 22 cility.

23 “(2) QUALIFIED PROPERTY.—For purposes of
 24 this subsection, the term ‘qualified property’ means
 25 property—

1 “(A) which is tangible property (including
2 a building or its structural components) which
3 is an integral part of a semiconductor manufac-
4 turing facility,

5 “(B) with respect to which depreciation (or
6 amortization in lieu of depreciation) is allow-
7 able,

8 “(C) which is—

9 “(i) constructed, reconstructed, or
10 erected by the taxpayer, or

11 “(ii) acquired by the taxpayer if the
12 original use of such property commences
13 with the taxpayer, and

14 “(D) which is necessary for the manufac-
15 turing or processing of, or performing research
16 with respect to, semiconductors or semicon-
17 ductor tooling equipment.

18 “(3) SEMICONDUCTOR MANUFACTURING FACIL-
19 ITY.—For purposes of this subpart, the term ‘semi-
20 conductor manufacturing facility’ means a facility
21 for which the primary purpose is the manufacturing
22 or processing of, or performing research with respect
23 to, semiconductors or semiconductor tooling equip-
24 ment.

1 “(4) COORDINATION WITH REHABILITATION
 2 CREDIT AND SEMICONDUCTOR MANUFACTURING
 3 PROPERTY.—The qualified investment with respect
 4 to any semiconductor manufacturing facility for any
 5 taxable year shall not include that portion of the
 6 basis of any property which is—

7 “(A) attributable to qualified rehabilitation
 8 expenditures (as defined in section 47(c)(2)), or

9 “(B) semiconductor manufacturing prop-
 10 erty (as defined in subsection (c)(2)).

11 “(c) QUALIFIED INVESTMENT WITH RESPECT TO
 12 SEMICONDUCTOR MANUFACTURING PROPERTY.—

13 “(1) IN GENERAL.—For purposes of subsection
 14 (a)(2), the qualified investment with respect to semi-
 15 conductor manufacturing property for any taxable
 16 year is the basis of any semiconductor manufac-
 17 turing property placed in service by the taxpayer
 18 during such taxable year.

19 “(2) SEMICONDUCTOR MANUFACTURING PROP-
 20 ERTY.—For purposes of this subpart, the term
 21 ‘semiconductor manufacturing property’ means tan-
 22 gible property—

23 “(A) for which the primary purpose is to
 24 manufacture or process, or perform research

1 with respect to, semiconductors or semicon-
2 ductor tooling equipment,

3 “(B) with respect to which depreciation (or
4 amortization in lieu of depreciation) is allow-
5 able, and

6 “(C) which is—

7 “(i) constructed, reconstructed, or
8 erected by the taxpayer, or

9 “(ii) acquired by the taxpayer if the
10 original use of such property commences
11 with the taxpayer.

12 “(d) CERTAIN PROGRESS EXPENDITURE RULES
13 MADE APPLICABLE.—Rules similar to the rules of sub-
14 sections (c)(4) and (d) of section 46 (as in effect on the
15 day before the date of the enactment of the Revenue Rec-
16 onciliation Act of 1990) shall apply for purposes of sub-
17 section (a).

18 “(e) REGULATIONS AND GUIDANCE.—The Secretary
19 shall prescribe such regulations or other guidance as may
20 be necessary or appropriate to carry out the purposes of
21 this section, including regulations or other guidance with
22 respect to—

23 “(1) determining the basis of qualified property
24 and semiconductor manufacturing property,

1 “(2) any such measures as are deemed appro-
 2 priate to avoid abuse or fraud with respect to the
 3 credit allowed under this section, and

4 “(3) ensuring that such credit is not allowed to
 5 multiple taxpayers.”.

6 (b) ELECTION FOR DIRECT PAYMENT.—Section 48D
 7 of the Internal Revenue Code of 1986, as added by sub-
 8 section (a), is amended by adding at the end the following:

9 “(f) ELECTION FOR DIRECT PAYMENT.—

10 “(1) IN GENERAL.—In the case of any qualified
 11 property or semiconductor manufacturing property
 12 placed in service during any taxable year (with the
 13 exception of any such property to which subsection
 14 (d) applied)), the amount of any credit determined
 15 under subsection (a) with respect to such property
 16 for such taxable year shall, at the election of the tax-
 17 payer, be treated as a payment equal to such
 18 amount which is made by the taxpayer against the
 19 tax imposed by chapter 1 for such taxable year (re-
 20 gardless of whether such tax would have been on
 21 such taxpayer).

22 “(2) FORM AND EFFECT OF ELECTION.—An
 23 election under paragraph (1) shall be made prior to
 24 the date on which the qualified property or semicon-
 25 ductor manufacturing property is placed in service

1 and in such manner as the Secretary may prescribe.

2 Such election, once made, shall—

3 “(A) be irrevocable with respect to the
4 qualified property or semiconductor manufac-
5 turing property to which such election applies,
6 and

7 “(B) reduce the amount of the credit
8 which would (but for this subsection) be allow-
9 able under this section with respect to such
10 property for the taxable year in which such
11 property is placed in service to zero.

12 “(3) APPLICATION TO PARTNERSHIPS AND S
13 CORPORATIONS.—In the case of a partnership or S
14 corporation which makes an election under para-
15 graph (1)—

16 “(A) such paragraph shall apply with re-
17 spect to such partnership or corporation with-
18 out regard to the fact that no tax is imposed
19 by chapter 1 on such partnership or corpora-
20 tion, and

21 “(B)(i) in the case of a partnership, each
22 partner’s distributive share of the credit deter-
23 mined under subsection (a) with respect to the
24 qualified property or semiconductor manufac-
25 turing property shall be deemed to be zero, and

1 “(ii) in the case of a S corporation, each
 2 shareholder’s pro rata share of the credit deter-
 3 mined under subsection (a) with respect to such
 4 property shall be deemed to be zero.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 46 of the Internal Revenue Code of
 7 1986 is amended—

8 (A) by striking “and” at the end of para-
 9 graph (5),

10 (B) by striking the period at the end of
 11 paragraph (6) and inserting “, and”, and

12 (C) by adding at the end the following new
 13 paragraph:

14 “(7) the semiconductor manufacturing invest-
 15 ment credit.”.

16 (2) Section 49(a)(1)(C) of such Code is amend-
 17 ed—

18 (A) by striking “and” at the end of clause
 19 (iv),

20 (B) by striking the period at the end of
 21 clause (v) and inserting a comma, and

22 (C) by adding at the end the following new
 23 clauses:

24 “(vi) the basis of any qualified prop-
 25 erty (as defined in section 48D(b)(2))

1 which is part of a semiconductor manufac-
 2 turing facility, and

3 “(vii) the basis of any semiconductor
 4 manufacturing property.”.

5 (3) Section 50(a)(2)(E) of such Code is amend-
 6 ed by striking “or 48C(b)(2)” and inserting
 7 “48C(b)(2), or 48D(d)”.

8 (4) Section 59A(b)(1)(B)(ii) of such Code is
 9 amended—

10 (A) in subclause (I), by striking “plus”,

11 (B) by redesignating subclause (II) as sub-
 12 clause (III), and

13 (C) by inserting after subclause (I) the fol-
 14 lowing:

15 “(II) the credit allowed under
 16 section 38 for the taxable year which
 17 is properly allocable to the portion of
 18 the investment credit determined
 19 under section 46 that is properly allo-
 20 cable to section 48D(a), plus”.

21 (5) The table of sections for subpart E of part
 22 IV of subchapter A of chapter 1 of such Code is
 23 amended by inserting after the item relating to sec-
 24 tion 48C the following new item:

“48D. Semiconductor manufacturing investment credit.”.

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided under
2 paragraph (2), the amendments made by this section
3 shall apply to property placed in service after De-
4 cember 31, 2021, under rules similar to the rules of
5 section 48(m) of the Internal Revenue Code of 1986
6 (as in effect on the day before the date of the enact-
7 ment of the Revenue Reconciliation Act of 1990).

8 (2) ELECTION FOR DIRECT PAYMENT.—The
9 amendments made by subsection (b) shall be effec-
10 tive with respect to any election made after Decem-
11 ber 31, 2021.

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