

115TH CONGRESS
1ST SESSION

S. 262

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

FEBRUARY 1, 2017

Mrs. CAPITO (for herself, Mr. BROWN, Mr. PORTMAN, Mr. CASEY, and Ms. STABENOW) 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 January 1, 2019,
8 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 if such person’s
24 rent, license fee, or other entitlement to net pay-
25 ments from the owner of such facility is measured

1 by a fixed dollar amount or a fixed amount per ton,
 2 or otherwise determined without regard to the profit
 3 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 for such taxable
 13 year which are otherwise deductible
 14 under this chapter (determined with-
 15 out regard to this subparagraph),

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

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

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

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

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

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