

117TH CONGRESS
2D SESSION

H. R. 7104

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2022

Mr. McCAUL (for himself, Ms. MATSUI, Mr. KELLY of Pennsylvania, Ms. DELBENE, Ms. STEFANIK, Mr. KILDEE, Mr. KATKO, Ms. SLOTKIN, and Mr. MELJER) introduced the following bill; which was referred to the Committee on Ways and Means

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 property, and

11 “(2) 25 percent of the qualified semiconductor
12 design expenditures paid or incurred during the tax-
13 able year.

14 “(b) QUALIFIED INVESTMENT WITH RESPECT TO
15 SEMICONDUCTOR MANUFACTURING FACILITY PROP-
16 erty.—

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

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

4 “(A) which is tangible property (including
5 a building or its structural components) which
6 is an integral part of any semiconductor manu-
7 facturing facility property,

8 “(B) with respect to which depreciation (or
9 amortization in lieu of depreciation) is allow-
10 able,

11 “(C) which is—

12 “(i) constructed, reconstructed, or
13 erected by the taxpayer, or

14 “(ii) acquired by the taxpayer if the
15 original use of such property commences
16 with the taxpayer, and

17 “(D) the primary purpose of which is to
18 manufacture or process, or perform research
19 with respect to, semiconductors or semicon-
20 ductor tooling equipment.

21 “(3) SEMICONDUCTOR MANUFACTURING FACIL-
22 ITY PROPERTY.—For purposes of this subpart, the
23 term ‘semiconductor manufacturing facility property’
24 means a facility for which the primary purpose is
25 the fabrication, assembly, testing and packaging of

1 semiconductor chips; semiconductor manufacturing
 2 equipment used in these and related processes such
 3 as material-handling and photomasking; or associ-
 4 ated metrology, material-handling and other related
 5 tools.

6 “(4) COORDINATION WITH REHABILITATION
 7 CREDIT.—The qualified investment with respect to
 8 any semiconductor manufacturing facility property
 9 for any taxable year shall not include that portion
 10 of the basis of any property which is attributable to
 11 qualified rehabilitation expenditures (as defined in
 12 section 47(c)(2)).

13 “(c) QUALIFIED SEMICONDUCTOR DESIGN EXPENDI-
 14 TURES.—For purposes of this section—

15 “(1) IN GENERAL.—Except as otherwise pro-
 16 vided in this subsection, the term ‘qualified semicon-
 17 ductor design expenditures’ means the amounts
 18 which are paid or incurred by the taxpayer during
 19 the taxable year which would be described in sub-
 20 section (b) of section 41 if such subsection were ap-
 21 plied with the modifications set forth in paragraph
 22 (3).

23 “(2) EXCLUSION FOR AMOUNTS FUNDED BY
 24 GRANTS, ETC.—The term ‘qualified semiconductor
 25 design expenditures’ shall not include any amount to

1 the extent such amount is funded by any grant, con-
2 tract, or otherwise by another person (or any gov-
3 ernmental entity).

4 “(3) MODIFICATIONS.—For purposes of para-
5 graph (1), subsection (b) of section 41 shall be ap-
6 plied—

7 “(A) by substituting ‘semiconductor re-
8 search’ for ‘qualified research’ each place it ap-
9 pears in paragraphs (2) and (3) of each sub-
10 section,

11 “(B) by substituting ‘100 percent’ for ‘65
12 percent’ in paragraph (3)(A) of such sub-
13 section, and

14 “(C) by substituting ‘100 percent’ for ‘75
15 percent’ in paragraph (3)(C)(i) of such sub-
16 section.

17 “(4) SEMICONDUCTOR RESEARCH.—The term
18 ‘semiconductor research’ means any research related
19 to designing or developing a semiconductor product,
20 including qualified semiconductor manufacturing
21 property, that is at least one generation beyond the
22 taxpayer’s most advanced commercially available
23 product (or the first generation if no such product
24 exists).

1 “(d) COORDINATION WITH CREDIT FOR INCREASING
2 RESEARCH EXPENDITURES.—

3 “(1) IN GENERAL.—Except as provided in para-
4 graph (2), any qualified semiconductor design ex-
5 penditures for which a credit is allowed under this
6 section shall not be taken into account for purposes
7 of determining the credit allowable under section 41
8 for such taxable year.

9 “(2) EXPENDITURES INCLUDED IN DETER-
10 MINING INCREASE TO RESEARCH ACTIVITIES.—Any
11 qualified semiconductor design expenditures for any
12 taxable year which are qualified research expenses
13 (within the meaning of section 41(b)) shall be taken
14 into account in determining the base amount or the
15 average qualified research expenses, whichever is ap-
16 plicable, for purposes of applying section 41 to sub-
17 sequent taxable years. Such qualified semiconductor
18 design expenditures shall not be taken into account
19 for purposes of section 41(f)(3).

20 “(e) SPECIAL RULES.—

21 “(1) CERTAIN PROGRESS EXPENDITURE RULES
22 MADE APPLICABLE.—Rules similar to the rules of
23 subsections (c)(4) and (d) of section 46 (as in effect
24 on the day before the date of the enactment of the

1 Revenue Reconciliation Act of 1990) shall apply for
2 purposes of subsection (a).

3 “(2) AGGREGATION AND ALLOCATION OF EX-
4 PENDITURES.—Rules similar to the rules of para-
5 graphs (1) and (2) of section 41(f) shall apply for
6 purposes of this section.

7 “(f) ELECTION FOR DIRECT PAYMENT.—

8 “(1) IN GENERAL.—In the case of any qualified
9 property or semiconductor manufacturing property
10 placed in service during any taxable year (with the
11 exception of any such property to which subsection
12 (g)(1) applied)), or in the case of any qualified semi-
13 conductor design expenditures paid or incurred dur-
14 ing the taxable year, the amount of any credit deter-
15 mined under subsection (a) with respect to such
16 property or such expenditures for such taxable year
17 shall, at the election of the taxpayer, be treated as
18 a payment equal to such amount which is made by
19 the taxpayer against the tax imposed by chapter 1
20 for such taxable year (regardless of whether such tax
21 would have been on 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 or the last day of the taxable year in which the
2 qualified semiconductor design expenditures are paid
3 or incurred and in such manner as the Secretary
4 may prescribe. Such election, once made, shall—

5 “(A) be irrevocable with respect to the
6 qualified property, semiconductor manufac-
7 turing property, or qualified semiconductor de-
8 sign expenditures to which such election applies,
9 and

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

16 “(3) APPLICATION TO PARTNERSHIPS AND S
17 CORPORATIONS.—In the case of a partnership or S
18 corporation which makes an election under para-
19 graph (1)—

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

1 “(B)(i) in the case of a partnership, each
2 partner’s distributive share of the credit deter-
3 mined under subsection (a) with respect to the
4 qualified property, semiconductor manufac-
5 turing property, or qualified semiconductor de-
6 sign expenditures shall be deemed to be zero,
7 and

8 “(ii) in the case of a S corporation, each
9 shareholder’s pro rata share of the credit deter-
10 mined under subsection (a) with respect to such
11 property shall be deemed to be zero.

12 “(g) RECAPTURE.—

13 “(1) IN GENERAL.—If there is a recapture
14 event with the respect to the credits allowed under
15 this section to any taxpayer, the tax imposed on
16 such taxpayer by this chapter for the taxable year
17 which includes the date of such recapture event shall
18 be increased by the amount of such credits.

19 “(2) RECAPTURE EVENT.—For purposes of this
20 subsection, the term ‘recapture event’ means, with
21 respect to the credits allowed under this section to
22 any taxpayer, the first date on which any of the fol-
23 lowing has occurred:

24 “(A) Any semiconductor manufacturing fa-
25 cility property with respect to which any such

1 credit was allowed is transferred to a foreign
2 entity of concern (as defined in section 9901 of
3 the William M. (Mac) Thornberry National De-
4 fense Authorization Act for Fiscal Year 2021)
5 or an entity under the influence, control, or
6 ownership of such a foreign entity of concern.

7 “(B) Foreign entities of concern (as so de-
8 fined) or entities under the influence, control,
9 or ownership of such foreign entities of concern
10 acquire a controlling interest in the taxpayer.

11 “(h) REGULATIONS AND GUIDANCE.—The Secretary
12 shall prescribe such regulations or other guidance as may
13 be necessary or appropriate to carry out the purposes of
14 this section, including regulations or other guidance with
15 respect to—

16 “(1) determining the basis of qualified property
17 and semiconductor manufacturing property,

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

21 “(3) ensuring that such credit is not allowed to
22 multiple taxpayers, and

23 “(4) carrying out the purposes of subsection
24 (g), including providing for the recapture of the

1 credit allowed under this section if the certification
2 described in such subsection is false.

3 “(i) TERMINATION.—No credit shall be determined
4 under this section for any property placed in service, or
5 any qualified semiconductor design expenditures paid or
6 incurred, after December 31, 2032.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 46 of the Internal Revenue Code of
9 1986 is amended—

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

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

14 (C) by adding at the end the following new
15 paragraph:

16 “(7) the semiconductor manufacturing invest-
17 ment credit.”.

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

20 (A) by striking “and” at the end of clause
21 (iv),

22 (B) by striking the period at the end of
23 clause (v) and inserting a comma, and (C) by
24 adding at the end the following new clauses:

1 “(vi) the basis of any qualified prop-
 2 erty (as defined in section 48D(b)(2))
 3 which is part of a semiconductor manufac-
 4 turing facility, and

5 “(vii) the basis of any semiconductor
 6 manufacturing property.”.

7 (3) Section 50(a)(2)(E) of such Code is amend-
 8 ed by striking “or 48C(b)(2)” and inserting
 9 “48C(b)(2), or 48D(f)(1)”.

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

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

13 (B) by redesignating subclause (II) as sub-
 14 clause (III), and

15 (C) by inserting after subclause (I) the fol-
 16 lowing:

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

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

“Sec. 48D. Semiconductor manufacturing investment credit.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to property placed in service after
3 December 31, 2022, and to qualified semiconductor design
4 expenditures paid or incurred after December 31, 2022,
5 under rules similar to the rules of section 48(m) of the
6 Internal Revenue Code of 1986 (as in effect on the day
7 before the date of the enactment of the Revenue Reconcili-
8 ation Act of 1990).

○