117TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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 _____

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Facilitating American-Built Semiconductors Act'' or the ''FABS Act''.

SEC. 2. SEMICONDUCTOR MANUFACTURING INVESTMENT CREDIT.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of

1986 is amended by inserting after section 48C the following new section:

"SEC. 48D. SEMICONDUCTOR MANUFACTURING INVESTMENT CREDIT.

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

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

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

"(b) QUALIFIED INVESTMENT WITH RESPECT TO SEMICONDUCTOR MANUFACTURING FACILITIES.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the qualified investment with respect to any semiconductor manufacturing facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a semiconductor manufacturing facility.

"(2) QUALIFIED PROPERTY.—For purposes of this subsection, the term 'qualified property' means property—

"(A) which is tangible property (including a building or its structural components) which is an integral part of a semiconductor manufacturing facility,

"(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

"(C) which is—

"(i) constructed, reconstructed, or erected by the taxpayer, or

"(ii) acquired by the taxpayer if the original use of such property commences with the taxpayer, and

"(D) which is necessary for the manufacturing or processing of, or performing research with respect to, semiconductors or semiconductor tooling equipment.

"(3) SEMICONDUCTOR MANUFACTURING FACILITY.—For purposes of this subpart, the term 'semiconductor manufacturing facility' means a facility for which the primary purpose is the manufacturing or processing of, or performing research with respect to, semiconductors or semiconductor tooling equipment.

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

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

''(B) semiconductor manufacturing property (as defined in subsection (c)(2)).

''(c) QUALIFIED INVESTMENT WITH RESPECT TO SEMICONDUCTOR MANUFACTURING PROPERTY.—

''(1) IN GENERAL.—For purposes of subsection (a)(2), the qualified investment with respect to semiconductor manufacturing property for any taxable year is the basis of any semiconductor manufacturing property placed in service by the taxpayer during such taxable year.

''(2) SEMICONDUCTOR MANUFACTURING PROPERTY.—For purposes of this subpart, the term 'semiconductor manufacturing property' means tangible property—

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

with respect to, semiconductors or semiconductor tooling equipment,

"(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(C) which is—

"(i) constructed, reconstructed, or erected by the taxpayer, or

"(ii) acquired by the taxpayer if the original use of such property commences with the taxpayer.

"(d) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

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

"(1) determining the basis of qualified property and semiconductor manufacturing property,

''(2) any such measures as are deemed appropriate to avoid abuse or fraud with respect to the credit allowed under this section, and

''(3) ensuring that such credit is not allowed to multiple taxpayers.''.

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

''(f) ELECTION FOR DIRECT PAYMENT.—

''(1) IN GENERAL.—In the case of any qualified property or semiconductor manufacturing property placed in service during any taxable year (with the exception of any such property to which subsection (d) applied)), the amount of any credit determined under subsection (a) with respect to such property for such taxable year shall, at the election of the taxpayer, be treated as a payment equal to such amount which is made by the taxpayer against the tax imposed by chapter 1 for such taxable year (regardless of whether such tax would have been on such taxpayer).

''(2) FORM AND EFFECT OF ELECTION.—An election under paragraph (1) shall be made prior to the date on which the qualified property or semiconductor manufacturing property is placed in service

and in such manner as the Secretary may prescribe. Such election, once made, shall—

"(A) be irrevocable with respect to the qualified property or semiconductor manufacturing property to which such election applies, and

"(B) reduce the amount of the credit which would (but for this subsection) be allowable under this section with respect to such property for the taxable year in which such property is placed in service to zero.

"(3) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation which makes an election under paragraph (1)—

"(A) such paragraph shall apply with respect to such partnership or corporation without regard to the fact that no tax is imposed by chapter 1 on such partnership or corporation, and

"(B)(i) in the case of a partnership, each partner's distributive share of the credit determined under subsection (a) with respect to the qualified property or semiconductor manufacturing property shall be deemed to be zero, and

''(ii) in the case of a S corporation, each shareholder's pro rata share of the credit determined under subsection (a) with respect to such property shall be deemed to be zero.''.

(c) CONFORMING AMENDMENTS.—

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

(A) by striking ''and'' at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting '', and'', and

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

''(7) the semiconductor manufacturing investment credit.''.

(2) Section 49(a)(1)(C) of such Code is amended—

(A) by striking ''and'' at the end of clause (iv),

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

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

''(vi) the basis of any qualified property (as defined in section 48D(b)(2))

which is part of a semiconductor manufacturing facility, and

"(vii) the basis of any semiconductor manufacturing property.".

(3) Section 50(a)(2)(E) of such Code is amended by striking "or 48C(b)(2)" and inserting "48C(b)(2), or 48D(d)".

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

(A) in subclause (I), by striking "plus",

(B) by redesignating subclause (II) as subclause (III), and

(C) by inserting after subclause (I) the following:

"(II) the credit allowed under section 38 for the taxable year which is properly allocable to the portion of the investment credit determined under section 46 that is properly allocable to section 48D(a), plus".

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

"48D. Semiconductor manufacturing investment credit.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 2021, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(2) ELECTION FOR DIRECT PAYMENT.—The amendments made by subsection (b) shall be effective with respect to any election made after December 31, 2021.