

111TH CONGRESS  
1ST SESSION

# H. R. 1789

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2009

Ms. CORRINE BROWN of Florida introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

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 “Comprehensive Rail  
5       Infrastructure Investment Act of 2009”.

1 **SEC. 2. CREDIT FOR FREIGHT RAIL INFRASTRUCTURE CA-**  
 2 **PACITY EXPANSION PROPERTY.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of subtitle A of the Internal Rev-  
 5 enue Code of 1986 (relating to business-related credits)  
 6 is amended by adding at the end the following new section:

7 **“SEC. 45R. FREIGHT RAIL CAPACITY EXPANSION CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,  
 9 the freight rail capacity expansion credit determined under  
 10 this section for the taxable year is an amount equal to  
 11 25 percent of the cost of the following property placed in  
 12 service during the taxable year:

13 “(1) New qualified freight rail infrastructure  
 14 property.

15 “(2) Qualified locomotive property.

16 “(b) NEW QUALIFIED FREIGHT RAIL INFRASTRUC-  
 17 TURE PROPERTY.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘new qualified  
 19 freight rail infrastructure property’ means qualified  
 20 freight rail infrastructure property—

21 “(A) the construction, erection, or eligible  
 22 bridge or tunnel replacement or expansion (pur-  
 23 suant to paragraph (2)) which the taxpayer cer-  
 24 tifies was completed after the date of enactment  
 25 of this section in compliance with the standards  
 26 of section 24312 of title 49, United States Code

1 (as in effect on the date of enactment of this  
2 subsection) with respect to the project in the  
3 same manner that the National Railroad Pas-  
4 senger Corporation is required to comply with  
5 such standards for construction work financed  
6 under an agreement made under section  
7 24308(a) of that title, or

8 “(B) which is acquired by the taxpayer  
9 after such date, but only if the original use of  
10 such property commences with the taxpayer.

11 “(2) EXCEPTION FOR PROPERTY REPLACING  
12 PROPERTY AT EXISTING LOCATION.—The term ‘new  
13 qualified freight rail infrastructure property’ does  
14 not include property which is replacing existing  
15 qualified freight rail infrastructure property if the  
16 replacement property is located at the site of the ex-  
17 isting property. The preceding sentence shall not  
18 apply to the replacement or expansion of a bridge or  
19 tunnel to allow for additional clearance, track, or  
20 other capacity enhancement where such clearance,  
21 track, or other capacity enhancement did not pre-  
22 viously exist.

23 “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-  
24 TURE PROPERTY.—

1           “(A) IN GENERAL.—The term ‘qualified  
2 freight rail infrastructure property’ means  
3 property used in the movement of freight by  
4 rail—

5           “(i) the cost of which is chargeable to  
6 capital account (determined without regard  
7 to section 179F), and

8           “(ii) which constitutes—

9           “(I) railroad grading or tunnel  
10 bore (as defined in section 168(e)(4)),

11           “(II) tunnels or subways,

12           “(III) track, including ties, rails,  
13 ballast, or other track material,

14           “(IV) bridges, trestles, culverts,  
15 or other elevated or submerged struc-  
16 tures,

17           “(V) terminals, yards, roadway  
18 buildings, fuel stations, or railroad  
19 wharves or docks, including fixtures  
20 attached thereto, and equipment used  
21 exclusively therein,

22           “(VI) railroad signal, commu-  
23 nication, or other operating systems,  
24 including components of such systems

1 that must be installed on locomotives  
2 or other rolling stock, or

3 “(VII) intermodal transfer or  
4 transload facilities or terminals, in-  
5 cluding fixtures attached thereto, and  
6 equipment used exclusively therein.

7 “(B) EXCLUSIONS.—The term ‘qualified  
8 freight rail infrastructure property’ shall not in-  
9 clude—

10 “(i) land,

11 “(ii) rolling stock, including loco-  
12 motives, or

13 “(iii) property used predominantly  
14 outside the United States,

15 except that this subparagraph shall not apply to  
16 any property described in section 168(g)(4).

17 “(c) QUALIFIED LOCOMOTIVE PROPERTY.—

18 “(1) IN GENERAL.—For purposes of this sec-  
19 tion, the term ‘qualified locomotive property’ means  
20 a locomotive—

21 “(A) which is acquired by the taxpayer  
22 after the date of enactment of this section, but  
23 only if the original use of such property com-  
24 mences with the taxpayer,

1           “(B) which is owned by, or leased to, a  
2 taxpayer which meets the capacity expansion re-  
3 quirement of paragraph (2) for the taxable year  
4 in which the locomotive is placed in service, and

5           “(C) which meets the Environmental Pro-  
6 tection Agency’s emission standards for loco-  
7 motives and locomotive engines as in effect on  
8 December 31, 2006.

9           “(2) CAPACITY EXPANSION REQUIREMENT.—A  
10 taxpayer meets the requirements of this paragraph  
11 with respect to any locomotive only if, on the last  
12 day of the taxable year in which such locomotive is  
13 placed in service, the total horsepower of all loco-  
14 motives owned by, or leased to, the taxpayer exceeds  
15 the total horsepower of all locomotives owned by, or  
16 leased to, the taxpayer on the last day of the pre-  
17 ceding taxable year. A determination under this  
18 paragraph shall be made pursuant to such reports as  
19 the Secretary, in consultation with the Surface  
20 Transportation Board, may prescribe.

21           “(3) SPECIAL RULE FOR THE LEASING OF LO-  
22 COMOTIVES.—In the case of the leasing of loco-  
23 motives, total horsepower under paragraph (2) shall  
24 be determined with respect to all locomotives owned  
25 by, or leased to, the lessee.

1 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

2 “(1) DEFINITIONS.—For purposes of this sec-  
3 tion—

4 “(A) RAILROAD SIGNAL, COMMUNICATION,  
5 OR OTHER OPERATING SYSTEM.—The term  
6 ‘railroad signal, communication, or other oper-  
7 ating system’ means an appliance, method, de-  
8 vice, or system (including hardware and soft-  
9 ware) which is used to operate a railroad or to  
10 improve safety or capacity of railroad oper-  
11 ations, including a signal, an interlocker, an  
12 automatic train stop, or a train control or cab-  
13 signal device.

14 “(B) INTERMODAL TRANSFER OR  
15 TRANSLOAD FACILITY OR TERMINAL.—The  
16 term ‘intermodal transfer or transload facility  
17 or terminal’ means a facility or terminal pri-  
18 marily utilized in the transfer of freight be-  
19 tween rail and any other mode of transpor-  
20 tation.

21 “(2) COORDINATION WITH OTHER CREDITS.—  
22 The cost of any property taken into account in de-  
23 termining the credit under this section may not be  
24 taken into account in determining a credit under any  
25 other provision of this title.

1           “(3) BASIS ADJUSTMENT.—If a credit is deter-  
2           mined under this section with respect to the cost of  
3           any qualified freight rail infrastructure property or  
4           qualified locomotive property, the basis of such prop-  
5           erty shall be reduced by the amount of the credit so  
6           determined.

7           “(4) SALE-LEASEBACKS.—If qualified freight  
8           rail infrastructure property or qualified locomotive  
9           property is—

10                   “(A) originally placed in service by a per-  
11                   son after the date of enactment of this section,  
12                   and

13                   “(B) sold and leased back by such person  
14                   within 3 months after the property is originally  
15                   placed in service (or, in the case of multiple  
16                   units of property subject to the same lease,  
17                   within 3 months after the date the final unit is  
18                   placed in service, so long as the period between  
19                   the time the first unit is placed in service and  
20                   the time the last unit is placed in service does  
21                   not exceed 12 months),

22                   such property shall be treated as originally placed in  
23                   service not earlier than the date on which such prop-  
24                   erty is used under the lease referred to in subpara-  
25                   graph (B).

1           “(5) RECAPTURE.—The benefit of any credit  
2           allowable under subsection (a) shall, under regula-  
3           tions prescribed by the Secretary, be recaptured with  
4           respect to any qualified locomotive property that is  
5           sold or otherwise disposed of by the taxpayer during  
6           the 5-year period beginning on the date on which  
7           such property is originally placed in service. The  
8           preceding sentence shall not apply to locomotive  
9           property that is sold by and subsequently leased  
10          back to the taxpayer.

11          “(e) TERMINATION.—This section shall not apply to  
12          any property placed in service after December 31, 2012.”.

13          (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-  
14          tion 38(b) of the Internal Revenue Code of 1986 (relating  
15          to current year business credit) is amended by striking  
16          “plus” at the end of paragraph (34), by striking the period  
17          at the end of paragraph (35) and inserting “, plus”, and  
18          by adding at the end the following new paragraph:

19                 “(36) the freight rail capacity expansion credit  
20                 determined under section 45R.”.

21          (c) COORDINATION WITH SECTION 55.—Section  
22          38(c)(4)(B) of the Internal Revenue Code of 1986 is  
23          amended by striking “and” at the end of clause (vii), by  
24          striking the period at the end of clause (viii) and inserting

1 “, and”, and by adding at the end the following new  
2 clause:

3 “(ix) for taxable years beginning after  
4 the date of the enactment of this clause,  
5 the credit determined under section 45R.”.

6 (d) BASIS ADJUSTMENT.—Subsection (a) of section  
7 1016 of the Internal Revenue Code of 1986 is amended  
8 by striking “and” at the end of paragraph (36), by strik-  
9 ing the period at the end of paragraph (37) and inserting  
10 “, and”, and by inserting after paragraph (37) the fol-  
11 lowing new paragraph:

12 “(38) to the extent provided in section  
13 45R(d)(3).”.

14 (e) CLERICAL AMENDMENT.—The table of sections  
15 for subpart D of part IV of subchapter A of chapter 1  
16 of the Internal Revenue Code of 1986 is amended by in-  
17 serting after the item relating to section 45Q the following  
18 new item:

“Sec. 45R. Freight rail capacity expansion credit.”.

19 (f) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to property placed in service after  
21 December 31, 2009.

22 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**  
23 **PROPERTY.**

24 (a) IN GENERAL.—Part VI of subchapter B of chap-  
25 ter 1 of subtitle A of the Internal Revenue Code of 1986

1 (relating to itemized deductions for individuals and cor-  
2 porations) is amended by inserting after section 179E the  
3 following new section:

4 **“SEC. 179F. ELECTION TO EXPENSE QUALIFIED FREIGHT**  
5 **RAIL INFRASTRUCTURE PROPERTY.**

6 “(a) ALLOWANCE OF DEDUCTION.—

7 “(1) IN GENERAL.—A taxpayer may elect to  
8 treat any amount paid or incurred for the acquisi-  
9 tion, construction, or erection of qualified freight rail  
10 infrastructure property (as defined in section  
11 45R(b)(3)) as an amount not chargeable to capital  
12 account. Any amount so treated shall be allowed as  
13 a deduction for the taxable year in which such prop-  
14 erty was placed in service.

15 “(2) COORDINATION WITH CREDIT.—The  
16 amount to which the election under paragraph (1)  
17 applies with respect to any property shall be reduced  
18 by an amount equal to the amount of any reduction  
19 in the basis of the property under section 45R(d)(3).

20 “(b) ELECTION.—An election under subsection (a)  
21 shall be made, with respect to each class of property for  
22 each taxable year, at such time and in such manner as  
23 the Secretary may prescribe by regulation. If a taxpayer  
24 makes such an election with respect to any class of prop-  
25 erty for any taxable year, the election shall apply to all

1 qualified freight rail infrastructure property in such class  
2 placed in service during such taxable year. An election  
3 under this section shall not affect the character of any  
4 property for the purposes of section 45R.

5 “(c) DEDUCTION ALLOWED IN COMPUTING MINIMUM  
6 TAX.—For purposes of determining alternative minimum  
7 taxable income under section 55, the deduction under sub-  
8 section (a) for qualified freight rail infrastructure property  
9 shall be determined under this section without regard to  
10 any adjustment under section 56.

11 “(d) TERMINATION.—This section shall not apply to  
12 any property placed in service after December 31, 2012.”.

13 (b) DEDUCTION FOR CAPITAL EXPENDITURES.—  
14 Section 263(a)(1) of the Internal Revenue Code of 1986  
15 (relating to capital expenditures) is amended by striking  
16 “or” at the end of subparagraph (K), by striking the pe-  
17 riod at the end of paragraph (L) and inserting “, or”,  
18 and by adding at the end the following new subparagraph:

19 “(M) expenditures for which a deduction is  
20 allowed under section 179F.”.

21 (c) TECHNICAL AND CLERICAL AMENDMENTS.—

22 (1) Section 312(k)(3)(B) of the Internal Rev-  
23 enue Code of 1986 is amended by striking “or  
24 179E” each place it appears in the text or heading  
25 thereof and inserting “179E, or 179F”.

1           (2) Paragraphs (2)(C) and (3)(C) of section  
2           1245(a) of such Code are each amended by inserting  
3           “179F,” after “179E,”.

4           (3) The table of sections for part VI of sub-  
5           chapter B of chapter 1 of subtitle A of such Code  
6           is amended by inserting after the item relating to  
7           section 179E the following new item:

“Sec. 179F. Election to expense qualified freight rail infrastructure property.”.

8           (d) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to property placed in service after  
10          December 31, 2009.

11       **SEC. 4. EXTENSION AND MODIFICATION OF RAILROAD**  
12                               **TRACK MAINTENANCE CREDIT.**

13          (a) EXTENSION OF CREDIT.—Section 45G(f) of the  
14          Internal Revenue Code of 1986 is amended by striking  
15          “January 1, 2010” and inserting “January 1, 2013”.

16          (b) EXPENDITURES.—Subsection (d) of section 45G  
17          of the Internal Revenue Code of 1986 (relating to quali-  
18          fied railroad track maintenance expenditures) is amended  
19          by striking “for maintaining” and all that follows and in-  
20          serting “for maintaining—

21                               “(A) in the case of taxable years beginning  
22                               after December 31, 2004, and before January  
23                               1, 2009, railroad track (including roadbed,  
24                               bridges, and related track structures) owned or  
25                               leased as of January 1, 2005, by a Class II or

1 Class III railroad (determined without regard  
2 to any consideration for such expenditures  
3 given by the Class II or Class III railroad which  
4 made the assignment of such track), and

5 “(B) in the case of taxable years beginning  
6 after December 31, 2008, railroad track (in-  
7 cluding roadbed, bridges, and related track  
8 structures) owned or leased as of January 1,  
9 2009, by a Class II or Class III railroad (deter-  
10 mined without regard to any consideration for  
11 such expenditures given by the Class II or Class  
12 III railroad which made the assignment of such  
13 track).”.

14 (c) CREDIT LIMITATION ADJUSTMENT.—Subpara-  
15 graph (A) of section 45G(b)(1) of the Internal Revenue  
16 Code of 1986 is amended by striking “\$3,500” and insert-  
17 ing “\$4,500”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2008.

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