115TH CONGRESS
1ST SESSION

# S. 1540

To amend the Internal Revenue Code of 1986 to allow a credit against tax for investments in qualified production facilities.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2017

Ms. STABENOW (for herself, Mr. BROWN, and Mr. PETERS) 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 allow a credit against tax for investments in qualified production facilities.

*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 ''Growing Small Businesses Act''.

**SEC. 2. CREDIT FOR QUALIFYING PRODUCTION FACILITIES.**

(a) INCOME TAX CREDIT.—

(1) IN GENERAL.—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 qualifying production facility credit.".

(2) AMOUNT OF CREDIT.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 48D the following new section:

**"SEC. 48E. CREDIT FOR QUALIFYING PRODUCTION FACILITIES.**

"(a) IN GENERAL.—For purposes of section 46, in the case of an eligible employer, the qualifying production facility credit for any taxable year is an amount equal to 25 percent of the basis of eligible property placed in service during the taxable year.

"(b) ELIGIBLE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible employer' means any employer—

"(A) which has no more than 50 full-time equivalent employees (within the meaning of section 45R(d)(2)) for the taxable year, and

"(B) which has not (prior to placing in service the production facility designated for purposes of this section) placed in service a dedicated facility for the production of goods for sale.

"(2) SAFE HARBOR.—

"(A) IN GENERAL.—An employer shall not be treated as having previously placed in service a facility described in paragraph (1)(B) if—

"(i) a credit under this section has not previously been allowed to the employer, and

"(ii) the cost of applicable property placed into service by the employer for each taxable year during the 5-taxable-year period ending immediately before the taxable year did not exceed $7,500.

"(B) APPLICABLE PROPERTY.—For purposes of subparagraph (A), the term 'applicable property' means personal property which would have qualified as eligible property under subsection (c)(1)(B) if such property were placed in service by an eligible employer at a qualified production facility after enactment of this Act for the production of a qualifying product.

"(3) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—For purposes of paragraph (1)(A), the term employee includes an individual described in section 401(c)(1).

"(c) ELIGIBLE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible property' means—

"(A) any qualifying production facility—

"(i)(I) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(II) which is acquired by the taxpayer by purchase (as defined in section 179(d)(2)), and

"(ii) for which a deduction is allowable under section 167, and

"(B) any personal property—

"(i) which is placed in service within 12 months of the date on which a qualifying production facility for which a credit is allowed under subsection (a) is placed in service, "(ii) which is used exclusively at such qualifying production facility primarily for the production of a qualifying product, and

"(iii) for which a deduction is allowable under section 167.

"(2) SPECIAL RULE FOR LEASED FACILITIES.—In the case of any of a qualifying production facility which is leased by the taxpayer, paragraph (1)(B) shall be applied by substituting 'the date on which the qualifying production facility was first leased by the taxpayer' for 'the date on which a qualifying production facility for which a credit is allowed under subsection (a) is placed in service' in clause (i).

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) QUALIFYING PRODUCTION FACILITY.—The term 'qualifying production facility' means any facility which—

"(A) is used to produce qualifying products, and

"(B) is designated by the taxpayer as a qualifying production facility for purposes of this section at such time and in such manner as the Secretary shall prescribe.

"(2) QUALIFYING PRODUCT.—The term 'qualifying product' means any of the following:

"(A) Tangible personal property.

"(B) Computer software (as defined in section 167(f)(1)(B)).

"(C) Property described in section 168(f)(3).

"(D) Property described in section 168(f)(4).

"(E) Food and beverages which are prepared by the taxpayer but not primarily for consumption at property owned by the taxpayer.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) CONTROLLED GROUP.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(2) PREDECESSOR.—Any reference in this section to an employer shall include a reference to any predecessor of such employer.

"(3) CERTAIN QUALIFIED PROGRESS EXPENDITURES 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 enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

"(f) ELECTION TO APPLY CREDIT AGAINST PAYROLL TAXES.—

"(1) IN GENERAL.—At the election of the eligible employer, section 3111(f) shall apply to the payroll tax credit portion of the credit otherwise determined under subsection (a) for the taxable year and such portion shall not be treated (other than for purposes of section 50(c)) as a credit determined under subsection (a).

"(2) PAYROLL TAX CREDIT PORTION.—For purposes of this subsection, the payroll tax credit portion of the credit determined under subsection (a) with respect to any qualified small business for any taxable year is the least of—

"(A) the amount specified in the election made under this subsection,

"(B) the credit determined under subsection (a) for the taxable year (determined before the application of this subsection), or

"(C) in the case of an eligible employer other than a partnership or S corporation, the amount of the business credit carryforward under section 39 carried from the taxable year (determined before the application of this subsection to the taxable year).

"(3) ELECTION.—

"(A) IN GENERAL.—Any election under this subsection for any taxable year—

"(i) shall specify the amount of the credit to which such election applies,

"(ii) shall be made on or before the due date (including extensions) of—

"(I) in the case of an eligible employer which is a partnership, the return required to be filed under section 6031,

"(II) in the case of an eligible employer which is an S corporation, the return required to be filed under section 6037, and

"(III) in the case of any other eligible employer, the return of tax for the taxable year, and "(iii) may be revoked only with the consent of the Secretary.

"(B) LIMITATIONS.—The amount specified in any election made under this subsection shall not exceed $250,000.

"(C) SPECIAL RULE FOR PARTNERSHIPS AND S CORPORATIONS.—In the case of an eligible employer which is a partnership or S corporation, the election made under this subsection shall be made at the entity level.

"(4) AGGREGATION RULES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all persons or entities treated as a single taxpayer under subsection (e)(1) shall be treated as a single taxpayer for purposes of this subsection.

"(B) SPECIAL RULES.—For purposes of this subsection and section 3111(g)—

"(i) each of the persons treated as a single taxpayer under subparagraph (A) may separately make the election under paragraph (1) for any taxable year, and

"(ii) the $250,000 amount under paragraph (3)(B)(i) shall be allocated among all persons treated as a single taxpayer under subparagraph (A) in the manner provided by the Secretary which is similar to the manner provided under section 41(f)(1).

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations to prevent the avoidance of the purposes of the limitations and aggregation rules under this subsection,

"(B) regulations to minimize compliance and recordkeeping burdens under this subsection, and

"(C) regulations for recapturing the benefit of credits determined under section 3111(g) in cases where there is a recapture or a subsequent adjustment to the payroll tax credit portion of the credit determined under subsection (a), including requiring amended income tax returns in the cases where there is such an adjustment.".

(3) SPECIAL RULES RELATING TO RECAPTURE.—

(A) CERTAIN RELATED PARTY TRANSACTION.—Paragraph (4) of section 50(a) of the

Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: "Subparagraph (B) shall not apply to investment credit property described in section 48E in any case in which the transaction is a transaction between related persons.".

(B) LOSS OF ELIGIBLE EMPLOYER STATUS.—Paragraph (5) of section 50(a) of such Code is amended by adding at the end the following new paragraph:

"(D) TREATMENT OF ELIGIBLE EMPLOYER STATUS FOR QUALIFYING PRODUCTION FACILITY CREDIT.—Paragraphs (1) and (2) shall not apply with respect to any credit allowed under section 48E solely because the taxpayer has ceased to be an eligible employer (as defined in section 48E(b)) in any taxable year after the year in which the credit is allowed.".

(4) CONFORMING AMENDMENTS.—

(A) Section 49(a)(1)(C) of the Internal Revenue Code of 1986 is amended—

(i) by striking "and" at the end of clause (v);

(ii) by striking the period at the end of clause (vi) and inserting ", and"; and

(iii) by adding after clause (vi) the following new clause:

"(vii) the basis of any eligible property under section 48E.".

(B) The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48D the following new item:

"Sec. 48E. Credit for qualifying production facilities.".

(b) PAYROLL TAX CREDIT.—Section 3111 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(g) CREDIT FOR QUALIFYING PRODUCTION FACILITIES.—

"(1) IN GENERAL.—In the case of a taxpayer who has made an election under section 48E(f) for a taxable year, there shall be allowed as a credit against the tax imposed by subsection (a) for the first calendar quarter which begins after the date on which the taxpayer files the return specified in section 48E(f)(3)(A)(ii) an amount equal to the payroll tax credit portion determined under section 48E(f)(2).

"(2) LIMITATION.—The credit allowed by paragraph (1) shall not exceed the tax imposed by subsection (a) for any calendar quarter on the wages paid with respect to the employment of all individuals in the employ of the employer.

"(3) CARRYOVER OF UNUSED CREDIT.—If the amount of the credit under paragraph (1) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be carried to the succeeding calendar quarter and allowed as a credit under paragraph (1) for such quarter.

"(4) DEDUCTION ALLOWED FOR CREDITED AMOUNTS.—The credit allowed under paragraph (1) shall not be taken into account for purposes of determining the amount of any deduction allowed under chapter 1 for taxes imposed under subsection (a).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, 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).

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