

116TH CONGRESS
1ST SESSION

S. 3032

To amend the Internal Revenue Code of 1986 to allow for transfers of the renewable electricity production credit, the energy credit, and the credit for carbon oxide sequestration.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2019

Mr. BENNET 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 for transfers of the renewable electricity production credit, the energy credit, and the credit for carbon oxide sequestration.

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 “Renewable Energy
5 Transferability Act”.

1 **SEC. 2. TRANSFERS OF CREDITS FOR RENEWABLE ELEC-**
2 **TRICITY PRODUCTION FACILITIES AND EN-**
3 **ERGY PROPERTY.**

4 (a) RENEWABLE ELECTRICITY PRODUCTION CRED-
5 IT.—Section 45(e) of the Internal Revenue Code of 1986
6 is amended by adding at the end the following new para-
7 graph:

8 “(12) TRANSFER OF CREDIT.—

9 “(A) IN GENERAL.—If the taxpayer elects
10 to transfer all (or any portion specified in the
11 election) of the credit determined under this
12 section for any taxable year with respect to any
13 qualified facility to an eligible project partner
14 for a specified period, then, the eligible project
15 partner specified in such election (and not the
16 taxpayer) shall be treated for purposes of this
17 title with respect to such credit (or such portion
18 thereof) as the person producing and selling the
19 electricity to which such credit (or portion
20 thereof) relates.

21 “(B) DEDUCTION FOR PAYMENTS IN CON-
22 NECTION WITH TRANSFER.—There shall be al-
23 lowed as a deduction under part VI of sub-
24 chapter B an amount equal to the amount paid
25 by a taxpayer as consideration for a transfer
26 described in subparagraph (A).

1 “(C) ELIGIBLE PROJECT PARTNER.—For
2 purposes of this paragraph, the term ‘eligible
3 project partner’ means, with respect to any
4 qualified facility, any person who—

5 “(i) has an ownership interest in such
6 qualified facility,

7 “(ii) provided equipment for or serv-
8 ices in the construction of such qualified
9 facility,

10 “(iii) provides electric transmission or
11 distribution services for such qualified fa-
12 cility,

13 “(iv) purchases electricity from such
14 qualified facility pursuant to a contract, or

15 “(v) provides financing for such quali-
16 fied facility.

17 For purposes of clause (v), any amount paid as
18 consideration for a transfer described in sub-
19 paragraph (A) shall not be treated as financing
20 of a qualified facility.

21 “(D) TAXABLE YEAR IN WHICH CREDIT
22 TAKEN INTO ACCOUNT.—In the case of any
23 credit (or portion thereof) with respect to which
24 an election is made under subparagraph (A),
25 such credit shall be taken into account in the

1 first taxable year of the eligible project partner
2 ending with, or after, the electing taxpayer's
3 taxable year with respect to which the credit
4 was determined.

5 “(E) LIMITATIONS ON ELECTION.—

6 “(i) TIME FOR ELECTION.—An elec-
7 tion under this paragraph to transfer any
8 portion of the credit allowed under this
9 section shall be made not later than the
10 due date for the return of tax for the elect-
11 ing taxpayer's taxable year with respect to
12 which the credit was determined.

13 “(ii) NO FURTHER TRANSFERS.—No
14 election may be made under this paragraph
15 by a taxpayer with respect to any portion
16 of the credit allowed under this section
17 which has been previously transferred to
18 such taxpayer under this paragraph.

19 “(F) TREATMENT OF TRANSFER UNDER
20 PRIVATE USE RULES.—For purposes of section
21 141(b)(1), any benefit derived by an eligible
22 project partner in connection with an election
23 under this paragraph shall not be taken into ac-
24 count as a private business use.

1 “(G) ADDITIONAL ELECTION REQUIRE-
2 MENTS.—The Secretary may prescribe such
3 regulations as may be appropriate to carry out
4 the purposes of this paragraph, including—

5 “(i) rules for determining which per-
6 sons are eligible project partners with re-
7 spect to any energy property, and

8 “(ii) requiring information to be in-
9 cluded in an election under subparagraph
10 (A) or imposing additional reporting re-
11 quirements.”.

12 (b) ENERGY CREDIT.—

13 (1) IN GENERAL.—Section 48 of the Internal
14 Revenue Code of 1986 is amended by adding at the
15 end the following new subsection:

16 “(e) TRANSFER OF CREDIT.—

17 “(1) IN GENERAL.—If the taxpayer elects to
18 transfer all (or any portion specified in the election)
19 of the credit determined under this section for any
20 taxable year with respect to any energy property to
21 an eligible project partner, the eligible project part-
22 ner specified in such election (and not the taxpayer)
23 shall be treated as the taxpayer for purposes of this
24 title with respect to such credit (or portion thereof).

1 “(2) DEDUCTION FOR PAYMENTS IN CONNEC-
 2 TION WITH TRANSFER.—There shall be allowed as a
 3 deduction under part VI of subchapter B an amount
 4 equal to the amount paid by a taxpayer as consider-
 5 ation for a transfer described in paragraph (1).

6 “(3) ELIGIBLE PROJECT PARTNER.—For pur-
 7 poses of this subsection, the term ‘eligible project
 8 partner’ means, with respect to any energy property,
 9 any person who—

10 “(A) has an ownership interest in such en-
 11 ergy property,

12 “(B) provided equipment for or services in
 13 the construction of such energy property,

14 “(C) provides electric transmission or dis-
 15 tribution services for such energy property,

16 “(D) purchases electricity from such quali-
 17 fied facility pursuant to a contract, or

18 “(E) provides financing for such energy
 19 property.

20 For purposes of subparagraph (E), any amount paid
 21 as consideration for a transfer described in para-
 22 graph (1) shall not be treated as financing of a
 23 qualified facility.

24 “(4) TAXABLE YEAR IN WHICH CREDIT TAKEN
 25 INTO ACCOUNT.—In the case of any credit (or por-

1 tion thereof) with respect to which an election is
2 made under paragraph (1), such credit shall be
3 taken into account in the first taxable year of the el-
4 igible project partner ending with, or after, the elect-
5 ing taxpayer's taxable year with respect to which the
6 credit was determined.

7 “(5) LIMITATIONS ON ELECTION.—

8 “(A) TIME FOR ELECTION.—An election
9 under this subsection to transfer any portion of
10 the credit allowed under this section shall be
11 made not later than the due date for the return
12 of tax for the electing taxpayer's taxable year
13 with respect to which the credit was deter-
14 mined.

15 “(B) NO FURTHER TRANSFERS.—No elec-
16 tion may be made under this subsection by a
17 taxpayer with respect to any portion of the
18 credit allowed under this section which has been
19 previously transferred to such taxpayer under
20 this subsection.

21 “(6) TREATMENT OF TRANSFER UNDER PRI-
22 VATE USE RULES.—For purposes of section
23 141(b)(1), any benefit derived by an eligible project
24 partner in connection with an election under this

1 subsection shall not be taken into account as a pri-
2 vate business use.

3 “(7) ADDITIONAL ELECTION REQUIREMENTS.—
4 The Secretary may prescribe such regulations as
5 may be appropriate to carry out the purposes of this
6 subsection, including—

7 “(A) rules for determining which persons
8 are eligible project partners with respect to any
9 energy property, and

10 “(B) requiring information to be included
11 in an election under paragraph (1) or imposing
12 additional reporting requirements.”.

13 (2) NORMALIZATION RULES.—Section 50(d) of
14 such Code is amended by adding at the end the fol-
15 lowing: “In the case of any energy property with re-
16 spect to which an election is made under section
17 48(e)(1), the rules of the section 46(f) referred to in
18 paragraph (2) shall apply only to the extent of
19 amounts paid in consideration of the transfer to
20 which such election relates.”.

21 (c) CREDIT FOR CARBON OXIDE SEQUESTRATION.—
22 Subparagraph (B) of section 45Q(f)(3) of the Internal
23 Revenue Code of 1986 is amended to read as follows:

24 “(B) TRANSFER OF CREDIT.—

1 “(i) IN GENERAL.—If the person de-
2 scribed in subparagraph (A) elects to
3 transfer all (or any portion specified in the
4 election) of the credit determined under
5 this section for any taxable year with re-
6 spect to any qualified facility to an eligible
7 project partner for a specified period, then,
8 the eligible project partner specified in
9 such election (and not the person described
10 in subparagraph (A)) shall be treated for
11 purposes of this title with respect to such
12 credit (or such portion thereof) as the per-
13 son described in clause (i) or (ii) of such
14 subparagraph, as applicable, to which such
15 credit (or portion thereof) relates.

16 “(ii) DEDUCTION FOR PAYMENTS IN
17 CONNECTION WITH TRANSFER.—There
18 shall be allowed as a deduction under part
19 VI of subchapter B an amount equal to the
20 amount paid by a taxpayer as consider-
21 ation for a transfer described in clause (i).

22 “(iii) ELIGIBLE PROJECT PARTNER.—
23 For purposes of this subparagraph, the
24 term ‘eligible project partner’ means, with

1 respect to any qualified facility, any person
2 who—

3 “(I) has an ownership interest in
4 such qualified facility or any carbon
5 capture equipment which is placed in
6 service at such qualified facility,

7 “(II) provided equipment for or
8 services in the construction of such
9 qualified facility or any carbon cap-
10 ture equipment which is placed in
11 service at such qualified facility,

12 “(III) provides fuel or feedstock
13 for the operation of such qualified fa-
14 cility,

15 “(IV) provides transportation,
16 transmission, or distribution services
17 for such qualified facility,

18 “(V) purchases, pursuant to a
19 contract, the industrial output of such
20 qualified facility or the commercial
21 products produced by utilization of
22 qualified carbon oxide captured at
23 such qualified facility,

24 “(VI) disposes of the qualified
25 carbon oxide, utilizes the qualified

1 carbon oxide, or uses the qualified
2 carbon oxide as a tertiary injectant, or
3 “(VII) provides financing for
4 such qualified facility or any carbon
5 capture equipment which is placed in
6 service at such qualified facility.

7 For purposes of subclause (VII), any
8 amount paid as consideration for a trans-
9 fer described in clause (i) shall not be
10 treated as financing of a qualified facility.

11 “(iv) TAXABLE YEAR IN WHICH CRED-
12 IT TAKEN INTO ACCOUNT.—In the case of
13 any credit (or portion thereof) with respect
14 to which an election is made under clause
15 (i), such credit shall be taken into account
16 in the first taxable year of the eligible
17 project partner ending with, or after, the
18 electing taxpayer’s taxable year with re-
19 spect to which the credit was determined.

20 “(v) LIMITATIONS ON ELECTION.—

21 “(I) TIME FOR ELECTION.—An
22 election under this subparagraph to
23 transfer any portion of the credit al-
24 lowed under this section shall be made
25 not later than the due date for the re-

1 turn of tax for the electing taxpayer’s
2 taxable year with respect to which the
3 credit was determined.

4 “(II) NO FURTHER TRANS-
5 FERS.—No election may be made
6 under this subparagraph by a tax-
7 payer with respect to any portion of
8 the credit allowed under this section
9 which has been previously transferred
10 to such taxpayer under this subpara-
11 graph.

12 “(vi) TREATMENT OF TRANSFER
13 UNDER PRIVATE USE RULES.—For pur-
14 poses of section 141(b)(1), any benefit de-
15 rived by an eligible project partner in con-
16 nection with an election under this sub-
17 paragraph shall not be taken into account
18 as a private business use.

19 “(vii) ADDITIONAL ELECTION RE-
20 QUIREMENTS.—The Secretary may pre-
21 scribe such regulations as may be appro-
22 priate to carry out the purposes of this
23 subparagraph, including—

24 “(I) rules for determining which
25 persons are eligible project partners

1 with respect to any qualified facility,
2 and

3 “(II) requiring information to be
4 included in an election under clause
5 (i) or imposing additional reporting
6 requirements.

7 “(viii) TRANSITION RULES.—Any elec-
8 tion made under this subparagraph with
9 respect to a qualified facility for any tax-
10 able years beginning before the date of en-
11 actment of the Renewable Energy Trans-
12 ferability Act shall not apply to any tax-
13 able years beginning after the date of en-
14 actment of such Act, and the person de-
15 scribed in subparagraph (A) may make a
16 new election or elections under clause (i)
17 with respect to such qualified facility.”.

18 (d) SPECIAL RULE FOR PROCEEDS OF TRANSFERS
19 FOR MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—
20 Section 501(c)(12)(I) of such Code is amended by striking
21 “45J(e)(1)” and inserting “45(e)(12), 45J(e)(1),
22 45Q(f)(3)(B), or 48(e)(1)”.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

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