

116TH CONGRESS  
2D SESSION

# S. 3694

To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment is made in property used to extract critical minerals and metals from the United States, to modify the prohibition on the acquisition of certain sensitive materials from non-allied foreign nations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 12, 2020

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment is made in property used to extract critical minerals and metals from the United States, to modify the prohibition on the acquisition of certain sensitive materials from non-allied foreign nations, and for other purposes.

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 “Onshoring Rare  
5       Earths Act of 2020” or the “ORE Act”.

1 **SEC. 2. PERMANENT FULL EXPENSING FOR PROPERTY**  
 2 **USED TO EXTRACT CRITICAL MINERALS AND**  
 3 **METALS WITHIN THE UNITED STATES.**

4 (a) IN GENERAL.—Section 168(k) of the Internal  
 5 Revenue Code of 1986 is amended by adding at the end  
 6 the following:

7 “(11) SPECIAL RULE FOR PROPERTY USED IN  
 8 THE EXTRACTION OF CRITICAL MINERALS AND MET-  
 9 ALS WITHIN THE UNITED STATES.—

10 “(A) IN GENERAL.—In the case of any  
 11 qualified property which is directly involved in  
 12 extracting critical minerals and metals from de-  
 13 posits in the United States—

14 “(i) paragraph (2)(A)(iii) shall not  
 15 apply, and

16 “(ii) the applicable percentage shall be  
 17 100 percent.

18 “(B) CRITICAL MINERALS AND METALS.—  
 19 For purposes of this paragraph, the term ‘crit-  
 20 ical minerals and metals’ means cerium, cobalt,  
 21 dysprosium, erbium, europium, gadolinium,  
 22 graphite, holmium, lanthanum, lithium, lute-  
 23 tium, manganese, neodymium, praseodymium,  
 24 promethium, samarium, scandium, terbium,  
 25 thulium, ytterbium, and yttrium.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to property placed in service after  
 3 December 31, 2019.

4 **SEC. 3. PERMANENT FULL EXPENSING FOR NONRESIDEN-**  
 5 **TIAL REAL PROPERTY USED IN THE EXTRAC-**  
 6 **TION OF CRITICAL MINERALS AND METALS**  
 7 **WITHIN THE UNITED STATES.**

8 (a) IN GENERAL.—Section 168 of the Internal Rev-  
 9 enue Code of 1986 is amended by adding at the end the  
 10 following new subsection:

11 “(n) SPECIAL ALLOWANCE FOR NONRESIDENTIAL  
 12 REAL PROPERTY USED IN THE EXTRACTION OF CRITICAL  
 13 MINERALS AND METALS WITHIN THE UNITED STATES.—

14 “(1) NEW STRUCTURES.—In the case of any  
 15 qualified real property—

16 “(A)(i) if such property is placed in service  
 17 on or after the date of enactment of this sub-  
 18 section, the depreciation deduction provided by  
 19 section 167(a) for the taxable year in which  
 20 such property is placed in service shall include  
 21 an allowance equal to 100 percent of the ad-  
 22 justed basis of such property, or

23 “(ii) if such property was placed in service  
 24 before the date of enactment of this subsection,  
 25 the depreciation deduction provided by section

1           167(a) for the first taxable year beginning after  
 2           such date shall include an allowance equal to  
 3           100 percent of the adjusted basis of such prop-  
 4           erty, and

5           “(B) the adjusted basis of such property  
 6           shall be reduced by the amount of such deduc-  
 7           tion before computing the amount otherwise al-  
 8           lowable as a depreciation deduction under this  
 9           chapter for such taxable year and any subse-  
 10          quent taxable year.

11          “(2) QUALIFIED REAL PROPERTY.—For pur-  
 12          poses of this subsection, the term ‘qualified real  
 13          property’ means any nonresidential real property  
 14          which is directly involved in extracting critical min-  
 15          erals and metals (as defined in subsection  
 16          (k)(11)(B)) from deposits in the United States.”.

17          (b) EFFECTIVE DATE.—The amendment made by  
 18          this section shall apply to taxable years beginning after  
 19          December 31, 2019.

20       **SEC. 4. DEDUCTION FOR PURCHASE OF CRITICAL MIN-**  
 21                               **ERALS AND METALS EXTRACTED WITHIN THE**  
 22                               **UNITED STATES.**

23          (a) IN GENERAL.—Part VI of subchapter B of chap-  
 24          ter 1 of the Internal Revenue Code of 1986 is amended  
 25          by inserting after section 176 the following new section:

1 **“SEC. 177. DEDUCTION FOR PURCHASE OF CRITICAL MIN-**  
2 **ERALS AND METALS EXTRACTED WITHIN THE**  
3 **UNITED STATES.**

4 “(a) ALLOWANCE OF DEDUCTION.—There shall be  
5 allowed as a deduction for the taxable year an amount  
6 equal to 200 percent of the cost paid or incurred by the  
7 taxpayer for the purchase or acquisition of critical min-  
8 erals and metals (as defined in section 168(k)(11)(B))  
9 which have been extracted from deposits in the United  
10 States.

11 “(b) APPLICATION WITH OTHER DEDUCTIONS.—No  
12 deduction shall be allowed under any other provision of  
13 this chapter with respect to any expenditure with respect  
14 to which a deduction is allowed or allowable under this  
15 section to the taxpayer.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-  
17 tions for part VI of subchapter B of chapter 1 of the Inter-  
18 nal Revenue Code of 1986 is amended by inserting after  
19 the item relating to section 176 the following new item:

“Sec. 177. Deduction for purchase of critical minerals and metals extracted  
within the United States.”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to amounts paid or incurred after  
22 December 31, 2019.

1 **SEC. 5. MODIFICATION OF PROHIBITION ON ACQUISITION**  
2 **OF CERTAIN SENSITIVE MATERIALS.**

3 (a) **EXTENSION OF PROHIBITION TO MINED, RE-**  
4 **FINED, AND SEPARATED MATERIALS.**—Subsection (a)(1)  
5 of section 2533c of title 10, United States Code, is amend-  
6 ed by striking “melted or produced” and inserting “mined,  
7 refined, separated, melted, or produced”.

8 (b) **COMMERCIALLY AVAILABLE OFF-THE-SHELF**  
9 **ITEM EXCEPTION.**—Subsection (c)(3)(A)(i) of such sec-  
10 tion is amended by striking “50 percent or more tung-  
11 sten” and inserting “50 percent or more covered mate-  
12 rial”.

13 **SEC. 6. GRANT PROGRAM FOR DEVELOPMENT OF CRITICAL**  
14 **MINERALS AND METALS.**

15 (a) **ESTABLISHMENT.**—The Secretary of Defense, in  
16 consultation with the Secretary of the Interior, shall estab-  
17 lish a grant program to finance pilot projects for the devel-  
18 opment of critical minerals and metals in the United  
19 States.

20 (b) **LIMITATION ON GRANT AWARDS.**—A grant  
21 awarded under subsection (a) may not exceed  
22 \$10,000,000.

23 (c) **ECONOMIC VIABILITY.**—In awarding grants  
24 under subsection (a), the Secretary of Defense shall give  
25 priority to projects the Secretary determines are likely to  
26 be economically viable over the long term.

1       (d) SECONDARY RECOVERY.—In awarding grants  
 2 under subsection (a) during a fiscal year, the Secretary  
 3 of Defense shall seek to award not less than 30 percent  
 4 of the total amount of grants awarded during that fiscal  
 5 year for projects relating to secondary recovery of critical  
 6 minerals and metals.

7       (e) AUTHORIZATION OF APPROPRIATIONS.—There  
 8 are authorized to be appropriated to the Secretary of De-  
 9 fense \$50,000,000 for each of fiscal years 2021 through  
 10 2024 to carry out the grant program established under  
 11 subsection (a).

12       (f) DEFINITIONS.—In this section:

13           (1) CRITICAL MINERALS AND METALS.—The  
 14 term “critical minerals and metals” means cerium,  
 15 cobalt, dysprosium, erbium, europium, gadolinium,  
 16 graphite, holmium, lanthanum, lithium, lutetium,  
 17 manganese, neodymium, praseodymium, pro-  
 18 methium, samarium, scandium, terbium, thulium,  
 19 ytterbium, and yttrium.

20           (2) SECONDARY RECOVERY.—The term “sec-  
 21 ondary recovery” means the recovery of minerals  
 22 and metals from discarded end-use products or from  
 23 waste products produced during the metal refining  
 24 and manufacturing process, including from mine  
 25 waste piles, acid mine drainage sludge, or byprod-

- 1        ucts produced through legacy mining and metallurgy
- 2        activities.

