

111TH CONGRESS
1ST SESSION

H. R. 272

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2009

Mr. MEEK of Florida (for himself and Mr. CANTOR) introduced the following bill; which was referred to the Committee on Ways and Means

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 “Freight Rail Infra-
5 structure Capacity Expansion 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)) of which is completed
24 by the taxpayer after the date of enactment of
25 this section, or

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

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

16 “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-
17 TURE PROPERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
19 freight rail infrastructure property’ means
20 property used in the movement of freight by
21 rail—

22 “(i) the cost of which is chargeable to
23 capital account (determined without regard
24 to section 179F), and

25 “(ii) which constitutes—

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

3 “(II) tunnels or subways,

4 “(III) track, including ties, rails,
5 ballast, or other track material,

6 “(IV) bridges, trestles, culverts,
7 or other elevated or submerged struc-
8 tures,

9 “(V) terminals, yards, roadway
10 buildings, fuel stations, or railroad
11 wharves or docks, including fixtures
12 attached thereto, and equipment used
13 exclusively therein,

14 “(VI) railroad signal, commu-
15 nication, or other operating systems,
16 including components of such systems
17 that must be installed on locomotives
18 or other rolling stock, or

19 “(VII) intermodal transfer or
20 transload facilities or terminals, in-
21 cluding fixtures attached thereto, and
22 equipment used exclusively therein.

23 “(B) EXCLUSIONS.—The term ‘qualified
24 freight rail infrastructure property’ shall not in-
25 clude—

1 “(i) land,

2 “(ii) rolling stock, including loco-
3 motives, or

4 “(iii) property used predominantly
5 outside the United States,

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

8 “(c) QUALIFIED LOCOMOTIVE PROPERTY.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the term ‘qualified locomotive property’ means
11 a locomotive which—

12 “(A) is acquired by the taxpayer after the
13 date of enactment of this section, but only if
14 the original use of such property commences
15 with the taxpayer,

16 “(B) is owned by, or leased to, a taxpayer
17 which meets the capacity expansion requirement
18 of paragraph (2) for the taxable year in which
19 the locomotive is placed in service, and

20 “(C) meets the Environmental Protection
21 Agency’s emission standards for locomotives
22 and locomotive engines as in effect on Decem-
23 ber 31, 2006.

24 “(2) CAPACITY EXPANSION REQUIREMENT.—A
25 taxpayer meets the requirements of this paragraph

1 with respect to any locomotive only if, on the last
2 day of the taxable year in which such locomotive is
3 placed in service, the total horsepower of all loco-
4 motives owned by, or leased to, the taxpayer exceeds
5 the total horsepower of all locomotives owned by, or
6 leased to, the taxpayer on the last day of the pre-
7 ceding taxable year. A determination under this
8 paragraph shall be made pursuant to such reports as
9 the Secretary, in consultation with the Surface
10 Transportation Board, may prescribe.

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

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

17 “(1) DEFINITIONS.—For purposes of this sec-
18 tion—

19 “(A) RAILROAD SIGNAL, COMMUNICATION,
20 OR OTHER OPERATING SYSTEM.—The term
21 ‘railroad signal, communication, or other oper-
22 ating system’ means an appliance, method, de-
23 vice, or system (including hardware and soft-
24 ware) which is used to operate a railroad or to
25 improve safety or capacity of railroad oper-

1 ations, including a signal, an interlocker, an
2 automatic train stop, or a train control or cab-
3 signal device.

4 “(B) INTERMODAL TRANSFER OR
5 TRANSLOAD FACILITY OR TERMINAL.—The
6 term ‘intermodal transfer or transload facility
7 or terminal’ means a facility or terminal pri-
8 marily utilized in the transfer of freight be-
9 tween rail and any other mode of transpor-
10 tation.

11 “(2) COORDINATION WITH OTHER CREDITS.—
12 The cost of any property taken into account in de-
13 termining the credit under this section may not be
14 taken into account in determining a credit under any
15 other provision of this title.

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

22 “(4) SALE-LEASEBACKS.—If qualified freight
23 rail infrastructure property or qualified locomotive
24 property is—

1 “(A) originally placed in service by a per-
2 son after the date of enactment of this section,
3 and

4 “(B) sold and leased back by such person
5 within 3 months after the property is originally
6 placed in service (or, in the case of multiple
7 units of property subject to the same lease,
8 within 3 months after the date the final unit is
9 placed in service, so long as the period between
10 the time the first unit is placed in service and
11 the time the last unit is placed in service does
12 not exceed 12 months),

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

17 “(5) RECAPTURE.—The benefit of any credit
18 allowable under subsection (a) shall, under regula-
19 tions prescribed by the Secretary, be recaptured with
20 respect to any qualified locomotive property that is
21 sold or otherwise disposed of by the taxpayer during
22 the 5-year period beginning on the date on which
23 such property is originally placed in service. The
24 preceding sentence shall not apply to locomotive

1 property that is sold by and subsequently leased
2 back to the taxpayer.

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

5 (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-
6 tion 38(b) of the Internal Revenue Code of 1986 (relating
7 to current year business credit) is amended by striking
8 “plus” at the end of paragraph (34), by striking the period
9 at the end of paragraph (35) and inserting “, plus”, and
10 by adding at the end the following new paragraph:

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

13 (c) COORDINATION WITH SECTION 55.—Section
14 38(c)(4)(B) of the Internal Revenue Code of 1986 is
15 amended by striking “and” at the end of clause (vii), by
16 striking the period at the end of clause (viii) and inserting
17 “, and”, and by adding at the end the following new
18 clause:

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

22 (d) BASIS ADJUSTMENT.—Subsection (a) of section
23 1016 of the Internal Revenue Code of 1986 is amended
24 by striking “and” at the end of paragraph (36), by strik-
25 ing the period at the end of paragraph (37) and inserting

1 “, and”, and by inserting after paragraph (37) the fol-
 2 lowing new paragraph:

3 “(38) to the extent provided in section
 4 45R(d)(3).”.

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

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

10 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**
 11 **PROPERTY.**

12 (a) IN GENERAL.—Part VI of subchapter B of chap-
 13 ter 1 of subtitle A of the Internal Revenue Code of 1986
 14 (relating to itemized deductions for individuals and cor-
 15 porations) is amended by inserting after section 179E the
 16 following new section:

17 **“SEC. 179F. ELECTION TO EXPENSE QUALIFIED FREIGHT**
 18 **RAIL INFRASTRUCTURE PROPERTY.**

19 “(a) ALLOWANCE OF DEDUCTION.—

20 “(1) IN GENERAL.—A taxpayer may elect to
 21 treat any amount paid or incurred for the acquisi-
 22 tion, construction, or erection of qualified freight rail
 23 infrastructure property (as defined in section
 24 45R(b)(3)) as an amount not chargeable to capital
 25 account. Any amount so treated shall be allowed as

1 a deduction for the taxable year in which such prop-
2 erty was placed in service.

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

8 “(b) ELECTION.—An election under subsection (a)
9 shall be made, with respect to each class of property for
10 each taxable year, at such time and in such manner as
11 the Secretary may prescribe by regulation. If a taxpayer
12 makes such an election with respect to any class of prop-
13 erty for any taxable year, the election shall apply to all
14 qualified freight rail infrastructure property in such class
15 placed in service during such taxable year. An election
16 under this section shall not affect the character of any
17 property for the purposes of section 45R.

18 “(c) DEDUCTION ALLOWED IN COMPUTING MINIMUM
19 TAX.—For purposes of determining alternative minimum
20 taxable income under section 55, the deduction under sub-
21 section (a) for qualified freight rail infrastructure property
22 shall be determined under this section without regard to
23 any adjustment under section 56.

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

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

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

9 (c) TECHNICAL AND CLERICAL AMENDMENTS.—

10 (1) Section 312(k)(3)(B) of the Internal Rev-
 11 enue Code of 1986 is amended by striking “or
 12 179E” each place it appears in the text or heading
 13 thereof and inserting “179E, or 179F”.

14 (2) Paragraphs (2)(C) and (3)(C) of section
 15 1245(a) of such Code are each amended by inserting
 16 “179F,” after “179E,”.

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

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

21 **SEC. 4. EFFECTIVE DATE.**

22 The amendments made by sections 2 and 3 shall
 23 apply to property placed in service after December 31,
 24 2009.

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