

116TH CONGRESS
2D SESSION

H. R. 7767

To amend the Internal Revenue Code of 1986 to provide for credits against tax for domestic medical and drug manufacturing and advanced medical manufacturing equipment.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2020

Mr. WENSTRUP (for himself and Mr. ARRINGTON) 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 for credits against tax for domestic medical and drug manufacturing and advanced medical manufacturing equipment.

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. DOMESTIC MEDICAL AND DRUG MANUFAC-**
4 **TURING CREDIT.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 is amended by adding at the end the following new
8 section:

1 **“SEC. 45U. DOMESTIC MEDICAL AND DRUG MANUFAC-**
2 **TURING CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 38, the
4 domestic medical and drug manufacturing credit deter-
5 mined under this section for any taxable year is an amount
6 equal to 10.5 percent of the lesser of—

7 “(1) the qualified medical and drug manufac-
8 turing income of the taxpayer for the taxable year,
9 or

10 “(2) taxable income of the taxpayer for the tax-
11 able year.

12 “(b) CREDIT LIMITED TO WAGES PAID.—

13 “(1) IN GENERAL.—The amount of the credit
14 allowable under subsection (a) for any taxable year
15 shall not exceed 50 percent of the W-2 wages of the
16 taxpayer for the taxable year.

17 “(2) W-2 WAGES.—For purposes of this sec-
18 tion—

19 “(A) IN GENERAL.—The term ‘W-2
20 wages’ means, with respect to any person for
21 any taxable year of such person, the sum of the
22 amounts described in paragraphs (3) and (8) of
23 section 6051(a) paid by such person with re-
24 spect to employment of employees by such per-
25 son during the calendar year ending during
26 such taxable year.

1 “(B) LIMITATION TO WAGES ATTRIB-
2 UTABLE TO DOMESTIC PRODUCTION.—Such
3 term shall not include any amount which is not
4 properly allocable to domestic medical and drug
5 manufacturing gross receipts for purposes of
6 subsection (c)(1).

7 “(C) RETURN REQUIREMENT.—Such term
8 shall not include any amount which is not prop-
9 erly included in a return filed with the Social
10 Security Administration on or before the 60th
11 day after the due date (including extensions)
12 for such return.

13 “(3) ACQUISITIONS, DISPOSITIONS, AND SHORT
14 TAXABLE YEARS.—The Secretary shall provide for
15 the application of this subsection in cases of a short
16 taxable year or where the taxpayer acquires, or dis-
17 poses of, the major portion of a trade or business or
18 the major portion of a separate unit of a trade or
19 business during the taxable year.

20 “(c) QUALIFIED MEDICAL AND DRUG MANUFAC-
21 TURING INCOME.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘qualified medical
23 and drug manufacturing income’ for any taxable
24 year means an amount equal to the excess (if any)
25 of—

1 “(A) the taxpayer’s domestic medical and
2 drug manufacturing gross receipts for the tax-
3 able year, over

4 “(B) the sum of—

5 “(i) the cost of goods sold that are al-
6 locable to such receipts, and

7 “(ii) other expenses, losses, or deduc-
8 tions which are properly allocable to such
9 receipts.

10 “(2) ALLOCATION METHOD.—The Secretary
11 shall prescribe rules for the proper allocation of
12 items described in paragraph (1)(B) for purposes of
13 determining qualified medical and drug manufac-
14 turing income. Such rules shall provide for the prop-
15 er allocation of items whether or not such items are
16 directly allocable to domestic medical and drug man-
17 ufacturing gross receipts.

18 “(3) SPECIAL RULES FOR DETERMINING
19 COSTS.—

20 “(A) IN GENERAL.—For purposes of deter-
21 mining costs under clause (i) of paragraph
22 (1)(B), any item or service brought into the
23 United States shall be treated as acquired by
24 purchase, and its cost shall be treated as not

1 less than its value immediately after it entered
2 the United States.

3 “(B) EXPORTS FOR FURTHER MANUFAC-
4 TURE.—In the case of any property described
5 in subparagraph (A) that had been exported by
6 the taxpayer for further manufacture, the in-
7 crease in cost or adjusted basis under subpara-
8 graph (A) shall not exceed the difference be-
9 tween the value of the property when exported
10 and the value of the property when brought
11 back into the United States after the further
12 manufacture.

13 “(4) DOMESTIC MEDICAL AND DRUG MANUFAC-
14 TURING GROSS RECEIPTS.—

15 “(A) IN GENERAL.—The term ‘domestic
16 medical and drug manufacturing gross receipts’
17 means the gross receipts of the taxpayer which
18 are derived from any sale, exchange, or other
19 disposition of—

20 “(i) any active pharmaceutical ingre-
21 dient, or

22 “(ii) any qualified countermeasure,
23 which was manufactured or produced by the
24 taxpayer in whole or in significant part within
25 the United States.

1 “(B) ACTIVE PHARMACEUTICAL INGREDIENT.—The term ‘active pharmaceutical ingredient’ means any substance or mixture of substances intended to be used in the manufacture of a drug product and (when so used) becomes an active ingredient in the drug product.

7 “(C) QUALIFIED COUNTERMEASURE.—The term ‘qualified countermeasure’ has the meaning given such term in section 319F-1(a)(2) of the Public Health Service Act (42 U.S.C. 247d-6a(a)(2)).”

12 “(D) PARTNERSHIPS OWNED BY EXPANDED AFFILIATED GROUPS.—For purposes of this paragraph, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

21 “(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

23 “(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—

1 “(A) PARTNERSHIPS AND S CORPORA-
2 TIONS.—In the case of a partnership or S cor-
3 poration—

4 “(i) this section shall be applied at the
5 partner or shareholder level,

6 “(ii) each partner or shareholder shall
7 take into account such person’s allocable
8 share of each item described in subpara-
9 graph (A) or (B) of subsection (c)(1) (de-
10 termined without regard to whether the
11 items described in such subparagraph (A)
12 exceed the items described in such sub-
13 paragraph (B)), and

14 “(iii) each partner or shareholder
15 shall be treated for purposes of subsection
16 (b) as having W-2 wages for the taxable
17 year in an amount equal to such person’s
18 allocable share of the W-2 wages of the
19 partnership or S corporation for the tax-
20 able year (as determined under regulations
21 prescribed by the Secretary).

22 “(B) TRUSTS AND ESTATES.—In the case
23 of a trust or estate—

24 “(i) the items referred to in subpara-
25 graph (A)(ii) (as determined therein) and

1 the W-2 wages of the trust or estate for
2 the taxable year, shall be apportioned be-
3 tween the beneficiaries and the fiduciary
4 (and among the beneficiaries) under regu-
5 lations prescribed by the Secretary, and

6 “(ii) for purposes of paragraph (2),
7 adjusted gross income of the trust or es-
8 tate shall be determined as provided in sec-
9 tion 67(e) with the adjustments described
10 in such paragraph.

11 “(C) REGULATIONS.—The Secretary may
12 prescribe rules requiring or restricting the allo-
13 cation of items and wages under this paragraph
14 and may prescribe such reporting requirements
15 as the Secretary determines appropriate.

16 “(2) APPLICATION TO INDIVIDUALS.—In the
17 case of an individual, subsection (a)(2) shall be ap-
18 plied by substituting ‘adjusted gross income’ for
19 ‘taxable income’. For purposes of the preceding sen-
20 tence, adjusted gross income shall be determined
21 after application of sections 86, 135, 137, 219, 221,
22 222, and 469.

23 “(3) SPECIAL RULE FOR AFFILIATED
24 GROUPS.—

1 “(A) IN GENERAL.—All members of an ex-
2 panded affiliated group shall be treated as a
3 single corporation for purposes of this section.

4 “(B) EXPANDED AFFILIATED GROUP.—
5 For purposes of this section, the term ‘ex-
6 panded affiliated group’ means an affiliated
7 group as defined in section 1504(a), deter-
8 mined—

9 “(i) by substituting ‘more than 50
10 percent’ for ‘at least 80 percent’ each place
11 it appears, and

12 “(ii) without regard to paragraphs (2)
13 and (4) of section 1504(b).

14 “(C) ALLOCATION OF CREDIT.—Except as
15 provided in regulations, the credit under sub-
16 section (a) shall be allocated among the mem-
17 bers of the expanded affiliated group in propor-
18 tion to each member’s respective amount (if
19 any) of qualified medical and drug manufac-
20 turing income.

21 “(4) TRADE OR BUSINESS REQUIREMENT.—
22 This section shall be applied by only taking into ac-
23 count items which are attributable to the actual con-
24 duct of a trade or business.

1 “(5) COORDINATION WITH MINIMUM TAX.—For
2 purposes of determining alternative minimum tax-
3 able income under section 55, qualified medical and
4 drug manufacturing income shall be determined
5 without regard to any adjustments under sections 56
6 through 59.

7 “(6) UNRELATED BUSINESS TAXABLE IN-
8 COME.—For purposes of determining the tax im-
9 posed by section 511, subsection (a)(1)(B) shall be
10 applied by substituting ‘unrelated business taxable
11 income’ for ‘taxable income’.

12 “(7) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as are necessary to carry out
14 the purposes of this section, including regulations
15 which prevent more than 1 taxpayer from being al-
16 lowed a credit under this section with respect to any
17 activity described in subsection (c)(4)(A).”.

18 (b) TREATMENT UNDER BASE EROSION TAX.—Sec-
19 tion 59A(b)(1)(B)(ii) of such Code is amended by striking
20 “plus” at the end of subclause (I), by redesignating sub-
21 clause (II) as subclause (III), and by inserting after sub-
22 clause (I) the following new subclause:

23 “(II) the credit allowed under
24 section 38 for the taxable year which
25 is properly allocable to the domestic

1 medical and drug manufacturing cred-
2 it determined under section 45U(a),
3 plus”.

4 (c) PART OF GENERAL BUSINESS CREDIT.—Section
5 38(b) of such Code is amended by striking “plus” at the
6 end of paragraph (32), by striking the period at the end
7 of paragraph (33) and inserting “, plus”, and by adding
8 at the end the following new paragraph:

9 “(34) the domestic medical and drug manufac-
10 turing credit determined under section 45U(a).”.

11 (d) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-
12 IMUM TAX.—Section 38(c)(4)(B) of such Code is amended
13 by redesignating clauses (x) through (xii) as clauses (xi)
14 through (xiii), respectively, and by inserting after clause
15 (ix) the following new clause:

16 “(x) the credit determined under sec-
17 tion 45U,”.

18 (e) CLERICAL AMENDMENT.—The table of sections
19 for subpart D of part IV of subchapter A of chapter 1
20 of such Code is amended by adding at the end the fol-
21 lowing new item:

“Sec. 45U. Domestic medical and drug manufacturing credit.”.

22 (f) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2020.

1 **SEC. 2. QUALIFYING ADVANCED MEDICAL MANUFAC-**
2 **TURING EQUIPMENT CREDIT.**

3 (a) IN GENERAL.—Subpart E of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 is amended by adding at the end the following new
6 section:

7 **“SEC. 48D. QUALIFYING ADVANCED MEDICAL MANUFAC-**
8 **TURING EQUIPMENT CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 46, the
10 qualifying advanced medical manufacturing equipment
11 credit determined under this section for any taxable year
12 is the applicable percentage of the basis of any qualifying
13 advanced medical manufacturing equipment placed in
14 service during such taxable year.

15 “(b) APPLICABLE PERCENTAGE.—For purposes of
16 subsection (a), the applicable percentage is—

17 “(1) 30 percent in the case of equipment which
18 is placed in service before January 1, 2028,

19 “(2) 20 percent in the case of equipment which
20 is placed in service during calendar year 2028,

21 “(3) 10 percent in the case of equipment which
22 is placed in service during calendar year 2029, and

23 “(4) 0 percent in the case of equipment which
24 is placed in service after December 31, 2029.

25 “(c) QUALIFYING ADVANCED MEDICAL MANUFAC-
26 TURING EQUIPMENT.—For purposes of this section, the

1 term ‘qualifying advanced medical manufacturing equip-
2 ment’ means property of a character subject to the allow-
3 ance for depreciation—

4 “(1) which is machinery or equipment that is
5 designed and used to manufacture a—

6 “(A) drug (as such term is defined in sec-
7 tion 201(g)(1) of the Federal Food, Drug, and
8 Cosmetic Act),

9 “(B) device (as such term is defined in sec-
10 tion 201(h) of such Act), or

11 “(C) biological product (as such term is
12 defined in section 351(i) of the Public Health
13 Service Act),

14 “(2) which has been identified by the Secretary
15 (after consultation with the Secretary of Health and
16 Human Services) as machinery or equipment that—

17 “(A) incorporates novel technology or uses
18 an established technique or technology in a new
19 or innovative way, or

20 “(B) that can improve medical product
21 quality, address shortages of medicines, and
22 speed time-to-market,

23 “(3) which is placed in service in the United
24 States by the taxpayer, and

1 (c) PART OF INVESTMENT CREDIT.—Section 46 of
2 such Code is amended by striking “and” at the end of
3 paragraph (5), by striking the period at the end of para-
4 graph (6) and inserting “, and”, and by adding at the
5 end the following new paragraph:

6 “(7) the qualifying advanced medical manufac-
7 turing equipment credit.”.

8 (d) CLERICAL AMENDMENT.—The table of sections
9 for subpart D of part IV of subchapter A of chapter 1
10 of such Code is amended by adding at the end the fol-
11 lowing new item:

“Sec. 48D. Qualifying advanced medical manufacturing equipment credit.”.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to periods after the date of the
14 enactment of this section under rules similar to the rules
15 of section 48(m) of the Internal Revenue Code of 1986
16 (as in effect on the date of the enactment fo the Revenue
17 Reconciliation Act of 1990).

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