

118TH CONGRESS
1ST SESSION

H. R. 838

To amend the Internal Revenue Code of 1986 to provide a tax credit to encourage the replacement or modernization of inefficient, outdated freight railcars, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2023

Mr. LAHOOD (for himself, Mr. SCHNEIDER, Mr. BACON, Mr. BISHOP of Georgia, Mr. BANKS, Mr. BLUMENAUER, Mr. CARL, Ms. BONAMICI, Mr. CRAWFORD, Mr. CUELLAR, Mr. ELLZEY, Mr. KILDEE, Mr. FERGUSON, Mr. PANETTA, Ms. GRANGER, Ms. SÁNCHEZ, Mr. GRAVES of Missouri, Ms. SEWELL, Mr. TONY GONZALES of Texas, Ms. TITUS, Mr. HUDSON, Ms. DAVIDS of Kansas, Mr. HERN, Mr. HUNT, Mr. MCCAUL, Mr. MORAN, Mr. MURPHY, Mr. ROGERS of Alabama, Mr. WILLIAMS of Texas, and Ms. VAN DUYNE) 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the Internal Revenue Code of 1986 to provide a tax credit to encourage the replacement or modernization of inefficient, outdated freight railcars, and for other purposes.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 “Freight Rail Assist-
5 ance and Investment to Launch Coronavirus-era Activity

1 and Recovery Act of 2023” or the “Freight RAILCAR
2 Act of 2023”.

3 **SEC. 2. FREIGHT RAILCAR MODERNIZATION CREDIT.**

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

8 **“SEC. 45BB. FREIGHT RAILCAR MODERNIZATION CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, the
10 freight railcar modernization credit determined under this
11 section for the taxable year is an amount equal to 10 per-
12 cent of the taxpayer’s freight railcar fleet modernization
13 expenses.

14 “(b) LIMITATION.—No more than 2,000 qualified
15 freight railcars per taxpayer may be taken into account
16 for purposes of determining the credit under subsection
17 (a) with respect to a taxable year.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) FREIGHT RAILCAR FLEET MODERNIZATION
20 EXPENSES.—The term ‘freight railcar fleet mod-
21 ernization expenses’ means the sum of the qualifying
22 railcar replacement and modernization amount.

23 “(2) QUALIFYING RAILCAR REPLACEMENT AND
24 MODERNIZATION AMOUNT.—The term ‘qualifying

1 railcar replacement and modernization amount’
2 means—

3 “(A) the basis of any qualified newly built
4 replacement railcar placed in service by the tax-
5 payer during the taxable year, plus

6 “(B) the qualified railcar modernization
7 expenditures of the taxpayer for the taxable
8 year.

9 “(3) QUALIFIED NEWLY BUILT REPLACEMENT
10 RAILCAR.—The term ‘qualified newly built replace-
11 ment railcar’ means a qualified freight railcar
12 which—

13 “(A) is built after the date of the enact-
14 ment of this section,

15 “(B) is ordered or originally placed in serv-
16 ice before the date that is three years after the
17 date of the enactment of this section, and

18 “(C) replaces two freight railcars owned by
19 the taxpayer that—

20 “(i) were in service within the 48
21 months preceding the beginning of the tax-
22 able year, and

23 “(ii) which were both scrapped and
24 permanently removed from the AAR Umler

1 System master file during such taxable
2 year.

3 “(4) QUALIFIED FREIGHT RAILCAR.—

4 “(A) IN GENERAL.—The term ‘qualified
5 freight railcar’ means a freight railcar that—

6 “(i) is either acquired or modernized
7 by the taxpayer after the date of the enact-
8 ment of this section,

9 “(ii) meets the significant improve-
10 ment requirements for capacity, fuel effi-
11 ciency, or performance of subparagraph
12 (B),

13 “(iii) was built in a qualified facility,
14 and

15 “(iv) with respect to which no credit
16 under this section was previously claimed
17 by any taxpayer.

18 “(B) SIGNIFICANT IMPROVEMENT.—For
19 purposes of this paragraph, an improvement in
20 capacity or fuel efficiency and performance with
21 respect to a modernized freight railcar is a sig-
22 nificant improvement if—

23 “(i) such capacity or fuel efficiency, as
24 the case may be, is increased by at least 8
25 percent, or

1 “(ii) in the case of performance, the
2 qualified freight railcar meets the require-
3 ments of the Association of American Rail-
4 roads Standard S-286 or is modernized to
5 meet the design standards set forth in final
6 rule HM-251 of the Pipeline and Haz-
7 ardous Materials Safety Administration (as
8 amended by HM-251C).

9 “(C) MODERNIZED.—The term ‘modern-
10 ized’ means modified, retrofitted, converted or
11 rebuilt for the purpose of meeting the signifi-
12 cant improvement criteria of subparagraph (B).

13 “(5) QUALIFIED RAILCAR MODERNIZATION EX-
14 PENDITURE.—The term ‘qualified railcar moderniza-
15 tion expenditure’ means any amount paid or in-
16 curred—

17 “(A) in connection with the modernization
18 of a freight railcar resulting in such railcar
19 being designated a qualified freight railcar, and

20 “(B) which is properly chargeable to a cap-
21 ital account with respect to such freight railcar.

22 “(6) QUALIFIED FACILITY.—The term ‘quali-
23 fied facility’ means a facility that is not owned or
24 leased by an entity that would be ineligible for an

1 award of a contract or subcontract under 49 U.S.C.
2 5323(u).

3 “(d) SPECIAL RULES.—

4 “(1) DENIAL OF DOUBLE BENEFIT.—No credit
5 shall be allowed under subsection (a) for any ex-
6 pense for which a deduction or credit is allowed
7 under any other provision of this chapter.

8 “(2) BASIS ADJUSTMENT.—For purposes of
9 this subtitle, if a credit is allowed under subsection
10 (a) with respect to any qualified freight railcar, the
11 basis of such railcar shall be reduced by the amount
12 of the credit so allowed.

13 “(3) SALE-LEASEBACK.—For purposes of sub-
14 section (a), if any qualified freight railcar is—

15 “(A) originally placed in service by a per-
16 son after the date of the enactment of this sec-
17 tion, and

18 “(B) sold and leased back by such person
19 within 3 months after such railcar is originally
20 placed in service (or, in the case of more than
21 one railcar subject to the same lease, within 3
22 months after the date the final railcar is placed
23 in service, so long as the period between the
24 time the first railcar is placed in service and the
25 time the last railcar is placed in service does

1 not exceed 24 months), such railcar shall be
2 treated as originally placed in service not earlier
3 than the date on which such railcar is used
4 under the leaseback referred to in this para-
5 graph.

6 “(4) SYNDICATION.—For purposes of sub-
7 section (a), if—

8 “(A) any qualified freight railcar is origi-
9 nally placed in service after the date of enact-
10 ment of this section by the lessor of such rail-
11 car,

12 “(B) such railcar is sold by such lessor or
13 any subsequent purchaser within 3 months
14 after the date such railcar was originally placed
15 in service (or, in the case of more than one rail-
16 car subject to the same lease, within 3 months
17 after the date the final railcar is placed in serv-
18 ice and the time the last railcar is placed in
19 service does not exceed 12 months), and

20 “(C) the user of such railcar after the last
21 sale during such 3-month period remains the
22 same as when such railcar was originally placed
23 in service, such railcars shall be treated as
24 originally placed in service not earlier than the
25 date of such last sale.

1 “(5) ENTITIES OWNED OR CONTROLLED BY
2 STATE-OWNED ENTERPRISES INELIGIBLE.—No cred-
3 it under subsection (a) shall be allowed to any tax-
4 payer that would be ineligible for an award of a con-
5 tract or subcontract under 49 U.S.C. 5323(u).

6 “(e) TERMINATION.—This section shall not apply to
7 any qualifying railcar replacement and modernization
8 amount after the date that is three years after the date
9 of the enactment of this section.”.

10 (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-
11 tion 38(b) of the Internal Revenue Code of 1986 (relating
12 to current year business credit) is amended by striking
13 “plus” at the end of paragraph (40), by striking the period
14 at the end of paragraph (41) and inserting “, plus” and
15 by inserting at the end thereof the following new para-
16 graph:

17 “(42) the freight railcar modernization credit
18 determined under section 45BB.”.

19 (c) COORDINATION WITH SECTION 55.—Section
20 38(c)(4)(B) of the Internal Revenue Code of 1986 is
21 amended by redesignating clauses (x), (xi), and (xii) as
22 clauses (xi), (xii), and (xiii), respectively, and by inserting
23 after clause (ix) the following new clause:

24 “(x) the freight railcar modernization
25 credit determined under section 45BB.”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1
3 of the Internal Revenue Code of 1986 is amended by in-
4 serting after the item relating to section 45AA the fol-
5 lowing new item:

“Sec. 45BB. Freight railcar modernization credit.”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to property placed in service, and
8 amounts paid or incurred, after December 31, 2022.

9 **SEC. 3. REPORT ON THE FREIGHT RAILCAR MODERNIZA-**
10 **TION CREDIT.**

11 (a) IN GENERAL.—Not later than 3 years after the
12 date of the enactment of this Act, the Secretary of the
13 Treasury (or the Secretary’s delegate), shall submit to the
14 Committee on Ways and Means of the House of Rep-
15 resentatives and the Committee on Finance of the Senate
16 a report on activity with respect to the qualified freight
17 railcar credit under section 45BB of the Internal Revenue
18 Code of 1986.

19 (b) REPORT CONTENTS.—The report submitted
20 under subsection (a) shall contain information with re-
21 spect to the following:

22 (1) The number of times the credit was
23 claimed.

24 (2) The number of railcars scrapped as a result
25 of the credit.

1 (3) The number of new railcars entered into
2 contract as a result of the credit.

3 (4) The number of new railcars built as a result
4 of the credit.

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