

118TH CONGRESS
2D SESSION

S. 4005

To amend the Internal Revenue Code of 1986 to allow an investment credit for certain domestic infant formula manufacturing projects and to allow a domestic production credit for certain infant formula.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2024

Mr. CASEY (for himself and Mr. HEINRICH) 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 an investment credit for certain domestic infant formula manufacturing projects and to allow a domestic production credit for certain infant formula.

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 “Infant Formula Made
5 in America Act of 2024”.

1 **SEC. 2. DOMESTIC INFANT FORMULA MANUFACTURING IN-**
2 **VESTMENT 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 inserting after section 48E the fol-
6 lowing new section:

7 **“SEC. 48F. DOMESTIC INFANT FORMULA MANUFACTURING**
8 **INVESTMENT CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 46, in
10 the case of an eligible taxpayer, the domestic infant for-
11 mula manufacturing credit for any taxable year is an
12 amount equal to 30 percent of the qualified investment
13 for such taxable year.

14 “(b) QUALIFIED INVESTMENT.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, the qualified investment for any taxable year is
17 the basis of eligible property placed in service by the
18 taxpayer during such taxable year which is part of
19 a qualifying infant formula manufacturing project.

20 “(2) CERTAIN QUALIFIED PROGRESS EXPENDI-
21 TURES RULES MADE APPLICABLE.—Rules similar to
22 the rules of subsections (c)(4) and (d) of section 46
23 (as in effect on the day before the enactment of the
24 Revenue Reconciliation Act of 1990) shall apply for
25 purposes of this section.

1 “(3) LIMITATION.—The amount which is treat-
2 ed as the qualified investment for all taxable years
3 with respect to any qualifying infant formula manu-
4 facturing project shall not exceed the amount des-
5 ignated by the Secretary as eligible for the credit.

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

7 “(1) ELIGIBLE TAXPAYER.—

8 “(A) IN GENERAL.—For purposes of this
9 section, the term ‘eligible taxpayer’ means a
10 taxpayer if such taxpayer’s total global revenue
11 for the calendar year that precedes the calendar
12 year in which the taxpayer submits an applica-
13 tion under subsection (d)(1)(A) does not exceed
14 \$750,000,000.

15 “(B) AGGREGATION RULES.—For purposes
16 of this paragraph, all persons which are treated
17 as a single employer under subsections (a) and
18 (b) of section 52 shall be treated as a single
19 taxpayer.

20 “(2) QUALIFYING INFANT FORMULA MANUFAC-
21 TURING PROJECT.—The term ‘qualifying infant for-
22 mula manufacturing project’ means a project, any
23 portion of the qualified investment of which is cer-
24 tified by the Secretary under subsection (d) as eligi-
25 ble for a credit under this section, which re-equips,

1 expands, or establishes a facility for the manufac-
2 ture of eligible infant formula.

3 “(3) ELIGIBLE PROPERTY.—The term ‘eligible
4 property’ means any property—

5 “(A) which is necessary for the manufac-
6 ture of eligible infant formula,

7 “(B) which is—

8 “(i) tangible personal property, or

9 “(ii) other tangible property (not in-
10 cluding a building or its structural compo-
11 nents), but only if such property is used as
12 an integral part of a facility described in
13 paragraph (2), and

14 “(C) with respect to which depreciation (or
15 amortization in lieu of depreciation) is allow-
16 able.

17 “(4) ELIGIBLE INFANT FORMULA.—The term
18 ‘eligible infant formula’ means infant formula that—

19 “(A) may lawfully be sold in the United
20 States, and

21 “(B) is manufactured in the United States.

22 “(d) CERTIFICATION.—

23 “(1) IN GENERAL.—

24 “(A) ESTABLISHMENT.—Not later than
25 180 days after the date of the enactment of this

1 section, the Secretary shall establish a quali-
2 fying infant formula manufacturing project pro-
3 gram to consider and award certifications for
4 qualified investments eligible for credits under
5 this section to qualifying infant formula manu-
6 facturing projects.

7 “(B) APPLICATION PERIOD.—Each appli-
8 cant for certification under this paragraph shall
9 submit an application—

10 “(i) certifying that not less than 50
11 percent of the eligible infant formula man-
12 ufactured using the eligible property to
13 which such application relates during the
14 1-year period beginning on the date on
15 which the qualifying infant formula manu-
16 facturing project is placed in service shall
17 be sold for use in the United States, and

18 “(ii) containing such information as
19 the Secretary shall require.

20 “(C) TIME TO MEET CRITERIA FOR CER-
21 TIFICATION.—Each applicant for certification
22 shall have 1 year from the date of acceptance
23 by the Secretary of the application during
24 which to provide to the Secretary evidence that

1 the requirements of the certification have been
2 met.

3 “(D) PERIOD OF ISSUANCE.—An applicant
4 which receives a certification shall have 3 years
5 from the date of issuance of the certification in
6 order to place the project in service and if such
7 project is not placed in service by that time pe-
8 riod, then the certification shall no longer be
9 valid.

10 “(2) LIMITATIONS.—

11 “(A) PROJECT AMOUNT.—The amount of
12 credit that may be allocated under paragraph
13 (1) shall not exceed \$150,000,000.

14 “(B) AGGREGATE AMOUNT.—The total
15 amount of credits that may be allocated under
16 paragraph (1) shall not exceed \$750,000,000.

17 “(C) SUNSET.—The Secretary may not al-
18 locate any credit dollar amount with respect to
19 any project that commences construction after
20 the date that is 10 years after the date of the
21 enactment of this section.

22 “(3) REVIEW AND REDISTRIBUTION.—

23 “(A) REVIEW.—Not later than 4 years
24 after the date of enactment of this section, the

1 Secretary shall review the credits allocated
2 under this section as of such date.

3 “(B) REDISTRIBUTION.—The Secretary
4 may reallocate credits awarded under this sec-
5 tion if the Secretary determines that—

6 “(i) there is an insufficient quantity
7 of qualifying applications for certification
8 pending at the time of the review, or

9 “(ii) any certification made pursuant
10 to paragraph (1) has been revoked pursu-
11 ant to paragraph (1)(B) because the
12 project subject to the certification has been
13 delayed as a result of third party opposi-
14 tion or litigation to the proposed project.

15 “(C) REALLOCATION.—If the Secretary de-
16 termines that credits under this section are
17 available for reallocation pursuant to the re-
18 quirements set forth in subparagraph (B), the
19 Secretary is authorized to conduct an additional
20 program for applications for certification.

21 “(4) DISCLOSURE OF ALLOCATIONS.—The Sec-
22 retary shall, upon making a certification under this
23 subsection, publicly disclose the identity of the appli-
24 cant and the amount of the credit with respect to
25 such applicant.

1 “(e) RECAPTURE.—

2 “(1) IN GENERAL.—If during the recapture pe-
3 riod there is a recapture event, then the tax imposed
4 by this chapter for the taxable year in which such
5 recapture period ends shall be increased by the sum
6 of—

7 “(A) the aggregate decrease in the credits
8 allowed to the taxpayer under section 38 for all
9 prior taxable years which would have resulted if
10 no credit had been determined under this sec-
11 tion with respect to the qualifying infant for-
12 mula manufacturing project, plus

13 “(B) interest at the underpayment rate es-
14 tablished under section 6621 on the amount de-
15 termined under subparagraph (A) for each
16 prior taxable year for the period beginning on
17 the due date for filing the return for the prior
18 taxable year involved.

19 “(2) RECAPTURE EVENT.—For purposes of this
20 subsection, the term ‘recapture event’ means—

21 “(A) a failure by the taxpayer to meet the
22 requirements of the certification made by the
23 taxpayer under subsection (d)(1)(A)(i), or

24 “(B) any property with respect to which an
25 allocation was made under this section ceases to

1 be eligible property which is part of a qualifying
2 infant formula manufacturing project.

3 “(3) RECAPTURE PERIOD.—For purposes of
4 this subsection, the term ‘recapture period’ means
5 the 1-year period beginning on the date on which a
6 qualifying infant formula manufacturing project
7 with respect to which an allocation is made under
8 this section is placed in service.

9 “(4) NO DEDUCTION FOR INTEREST.—No de-
10 duction shall be allowed under this chapter for inter-
11 est described in paragraph (1)(B).

12 “(5) SPECIAL RULES.—

13 “(A) TAX BENEFIT RULE.—The tax for
14 the taxable year shall be increased under para-
15 graph (1) only with respect to credits allowed
16 by reason of this section which were used to re-
17 duce tax liability. In the case of credits not so
18 used to reduce tax liability, the carryforwards
19 and carrybacks under section 39 shall be appro-
20 priately adjusted.

21 “(B) NO CREDITS AGAINST TAX.—Any in-
22 crease in tax under this subsection shall not be
23 treated as a tax imposed by this chapter for
24 purposes of determining the amount of any

1 credit under this chapter or for purposes of sec-
2 tion 55.

3 “(f) COORDINATION WITH REHABILITATION CRED-
4 IT.—The qualified investment with respect to any quali-
5 fying infant formula manufacturing project for any tax-
6 able year shall not include that portion of the basis of any
7 project which is attributable to qualified rehabilitation ex-
8 penditures (as defined in section 47(c)(2)).

9 “(g) REGULATIONS.—The Secretary shall issue such
10 regulations or other guidance as may be necessary or ap-
11 propriate to carry out the purposes of this section, includ-
12 ing regulations providing for the appropriate conversion
13 of quantities of liquid concentrate eligible infant formula
14 to pounds of dry eligible formula.”.

15 (b) INCLUSION IN INVESTMENT CREDIT.—Section 46
16 of such Code is amended in paragraph (6) by striking
17 “and”, in paragraph (7) by striking the period and insert-
18 ing “, and”, and by adding at the end the following new
19 paragraph:

20 “(8) the domestic infant formula manufacturing
21 investment credit.”.

22 (c) CREDIT MADE TRANSFERABLE.—Section
23 6418(f)(1) of such Code is amended by adding at the end
24 the following new clause:

1 “(xii) The domestic infant formula
2 manufacturing investment credit deter-
3 mined under section 48F.”.

4 (d) ELECTIVE PAYMENT OF CREDIT.—Section
5 6417(b) of such Code is amended by adding at the end
6 the following new paragraph:

7 “(13) The domestic infant formula manufac-
8 turing investment credit determined under section
9 48F.”.

10 (e) CERTAIN NONRECOURSE FINANCING EXCLUDED
11 FROM CREDIT BASE.—Section 49(a)(1)(C) of such Code
12 is amended by striking “and” at the end of clause (vii),
13 by striking the period at the end of clause (viii) and insert-
14 ing “, and”, and by adding at the end the following new
15 clause:

16 “(ix) the basis of any eligible property
17 (as defined in section 48F(e)(3)) which is
18 part of a qualifying infant formula manu-
19 facturing project under section 48F.”.

20 (f) CLERICAL AMENDMENT.—The table of sections
21 for subpart E of part IV of subchapter A of chapter 1
22 of such Code is amended by inserting after the item relat-
23 ing to section 48E the following new item:

“Sec. 48F. Domestic infant formula manufacturing investment credit.”.

24 (g) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to projects the construction of

1 which commences after the date of the enactment of this
2 Act.

3 **SEC. 3. INFANT FORMULA PRODUCTION CREDIT.**

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

7 **“SEC. 45BB. INFANT FORMULA PRODUCTION CREDIT.**

8 “(a) IN GENERAL.—In the case of a qualified tax-
9 payer, for purposes of section 38, the infant formula pro-
10 duction credit for any taxable year is an amount equal
11 to the product of—

12 “(1) the amount in pounds (determined con-
13 sistent with regulations issued under section 48F(g)
14 with respect to liquid concentrate) of eligible infant
15 formula manufactured by such taxpayer and sold for
16 use in the United States during such taxable year,
17 multiplied by

18 “(2) \$2.

19 “(b) QUALIFIED TAXPAYER.—For purposes of this
20 section, the term ‘qualified taxpayer’ means, with respect
21 to a taxable year—

22 “(1) a taxpayer if such taxpayer’s total global
23 revenue for the preceding taxable year does not ex-
24 ceed \$750,000,000, or

1 “(2) a taxpayer to whom a credit was allowed
2 under this section in the preceding taxable year.

3 “(c) ELIGIBLE INFANT FORMULA DEFINED.—For
4 purposes of this section, the term ‘eligible infant formula’
5 has the meaning given such term in section 48F.

6 “(d) LIMITATIONS.—

7 “(1) MAXIMUM AMOUNT OF FORMULA.—For
8 purposes of determining the amount of the credit
9 under subsection (a), the amount of eligible infant
10 formula determined under subsection (a) with re-
11 spect to any taxable year shall not exceed
12 18,000,000 pounds.

13 “(2) 5-YEAR LIMITATION.—No credit shall be
14 allowed under subsection (a) to a taxpayer for a tax-
15 able year unless—

16 “(A) no credit has been allowed to such
17 taxpayer in any prior taxable year, or

18 “(B) such taxable year occurs during the 5
19 taxable year period beginning on the first day
20 of the first taxable year for which a credit was
21 allowed under subsection (a) to such taxpayer.

22 “(e) AGGREGATION RULES.—For purposes of this
23 section, all persons which are treated as a single employer
24 under subsections (a) and (b) of section 52 shall be treated
25 as a single taxpayer.

1 “(f) COORDINATION WITH INVESTMENT CREDIT.—
 2 Infant formula produced at a facility with respect to which
 3 a credit was allowed under section 48F shall not be taken
 4 into account for purposes of subsection (a).”.

5 (b) CREDIT MADE TRANSFERABLE.—Section
 6 6418(f)(1) of such Code (as amended by section 2) is
 7 amended by adding at the end the following new clause:

8 “(xiii) The infant formula production
 9 credit determined under section 45BB.”.

10 (c) ELECTIVE PAYMENT OF CREDIT.—Section
 11 6417(b) of such Code (as amended by section 2) is amend-
 12 ed by adding at the end the following new paragraph:

13 “(14) The infant formula production credit de-
 14 termined under section 45BB.”.

15 (d) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 16 NESS CREDIT.—Section 38(b) of such Code is amended
 17 by striking “plus” at the end of paragraph (40), by strik-
 18 ing the period at the end of paragraph (41) and inserting
 19 “, plus”, and by adding at the end the following new para-
 20 graph:

21 “(42) the infant formula production credit de-
 22 termined under section 45BB(a).”.

23 (e) CLERICAL AMENDMENT.—The table of sections
 24 for subpart D of part IV of subchapter A of the Internal

1 Revenue Code of 1986 is amended by adding at the end
2 the following new item:

“Sec. 45BB. Infant formula production credit.”.

3 (f) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to formula manufactured after the
5 date of the enactment of this Act.

○