DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE PROVISIONS OF THE "CLEAN ENERGY FOR AMERICA ACT"

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the provisions of the "Clean Energy for America Act," which is to be marked up by the Senate Committee on Finance on May 26, 2021.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to the Provisions of the "Clean Energy for America Act,"* (JCX-28-21), May 26, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Provisions Modifying the Proposal in the Chairman's Mark

1. Modification to Item I.A. of the Chairman's Mark relating to the clean electricity production credit

Nascent clean energy technologies

The modification increases the clean electricity production tax credit by 10 percent for nascent clean energy technologies which have achieved a market penetration of less than 3 percent during the calendar year preceding the calendar year in which such taxable year began. This modification will be subject to the other rules applicable to the clean electricity production credit, including a direct payment election and the wage and workforce requirements.

Energy communities

The modification increases the clean electricity production tax credit rate by 10 percent with respect to facilities located in an "energy community." An energy community is defined as: (1) a census tract (or immediately adjacent tract) in which at least five percent of employment is within the oil and gas sector; (2) a census tract (or immediately adjacent tract) in which, in the period since 1999, a coal mine has closed, or, in the period since 2009, a coal-fueled power plant has retired; or (3) a census tract (or immediately adjacent tract) wherein an industrial facility is located that is mandated to report CO_2e emissions under the Environmental Protection Agency's Greenhouse Gas Reporting Program.

Domestic content

The modification increases the clean electricity production tax credit rate by 10 percent with respect to facilities which certify that the steel, iron, and manufactured products used in such facility were produced in the United States. For purposes of steel and iron, this requirement shall be applied consistent with section 661.5(b) of title 49, Code of Federal Regulations. In the case of manufactured products, the manufactured product shall be considered manufactured in the United States if the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

With respect to facilities that do not meet domestic content requirements, the election for direct payment shall be limited to 90 percent of otherwise allowable credit value in 2024, to 85 percent of otherwise allowable credit value in 2025, and to zero percent of credit value in 2026 and later.

This modification shall be applied in a manner consistent with the United States' obligations under international agreements.

2. Modification to Item I.B.1. of the Chairman's Mark relating to the clean electricity investment credit

Nascent clean energy technologies

The modification increases the clean electricity investment credit by 10 percentage points for nascent clean energy technologies which have achieved a market penetration of less than 3 percent during the calendar year preceding the calendar year in which such taxable year began. This modification will be subject to the other rules applicable to the clean electricity investment credit, including a direct payment election and the wage and workforce requirements.

Qualified interconnection expenses

The modification allows qualified interconnection expenses to be considered qualifying property for purposes of calculating the clean electricity investment credit including for purposes of electing for a direct payment. Qualified interconnection expenses shall include, but not be limited to, fees and costs related to labor and equipment related to the installation or connection of the underlying qualifying property as part of a transmission or distribution network upgrade. This modification is limited to projects with a maximum output of no more than 5 megawatts.

Energy communities

The modification increases the clean electricity investment credit rate by 10 percentage points with respect to facilities located in an "energy community." An energy community is defined as: (1) a census tract (or immediately adjacent tract) in which at least five percent of employment is within the oil and gas sector; (2) a census tract (or immediately adjacent tract) in which, in the period since 1999, a coal mine has closed, or, in the period since 2009, a coal-fueled power plant has retired; or (3) a census tract (or immediately adjacent tract) wherein an industrial facility is located that is mandated to report CO_2e emissions under the Environmental Protection Agency's Greenhouse Gas Reporting Program.

Domestic content

The modification increases the clean electricity investment credit rate by 10 percentage points with respect to property certified by the taxpayer to be composed of steel, iron, and/or manufactured products produced in the United States. For purposes of steel and iron, this requirement shall be applied consistent with section 661.5(b) of title 49, Code of Federal Regulations. In the case of manufactured products, the manufactured product shall be considered manufactured in the United States if the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

With respect to facilities that do not meet domestic content requirements, the election for direct payment shall be limited to 90 percent of otherwise allowable credit value in 2024, to 85 percent of otherwise allowable credit value in 2025, and to zero percent of credit value in 2026 and later.

This modification shall be applied in a manner consistent with the United States' obligations under international agreements.

Limitation

The modification imposes a maximum credit rate under the proposal of 50 percent regardless of domestic content, location of the project, or development of nascent technologies.

3. Modification to Item I.A, I.B.1, I.C.2, I.C.4, I.C.5, VII.A. of the Chairman's Mark relating to the election for direct payments in lieu of credits

Real estate investment trusts ("REITs")

The modification clarifies that, notwithstanding the retained taxable income rule, REITs can elect and receive direct payments of those credits in the Chairman's Mark that provide for such direct payment elections.

Rural electric cooperatives and publicly owned utilities

The modification also clarifies that, notwithstanding any other provision in the Code, rural electric cooperatives and utilities owned by State, local, or tribal governments can elect and receive direct payments of the clean electricity production credit and the clean electricity investment credit. The application of this modification shall be limited under rules similar to those set forth in sections 45(b)(3) and 48(a)(4).

Timing of election

The modification changes the date before which an election for a direct payment must be made. Under the modification, an election for a direct payment must be made prior to the date the facility or property (as applicable) is placed in service (rather than before the date on which construction begins).

4. Modification to item I.B.2. of the Chairman's Mark relating to the residential clean electricity credit

The Chairman's modification extends present law section 25D through 2023 and restores the credit rate to 30 percent. These changes apply to property placed in service after December 31, 2020 and before January 1, 2024.

5. Modification to Item I.C.5. of the Chairman's Mark relating to the energy investment credit

Biodigesters

The Chairman's modification modifies the definition of energy property in section 48 to include qualified biogas property and qualified manure resource recovery property and provides a 30-percent credit for these properties.

Qualified biogas property is property comprising a system that uses anaerobic digesters, or other biological, chemical, thermal, or mechanical processes to convert biomass[2] into a gas of at least 52 percent methane and captures such gas for use as a fuel. Qualified biogas property also includes property which cleans and conditions such gas for use as a fuel.

Qualified manure resource recovery property is property comprising a system which uses physical, biological, chemical, thermal, or mechanical processes to recover the nutrients nitrogen and phosphorus from a non-treated digestate or animal manure by reducing or separating at least 50 percent of the concentration of such nutrients, excluding any reductions during the incineration, storage, composting, or field application of the non-treated digestate or animal manure. Such property also includes property used to recover such nutrients[3] and any thermal drier which treats these recovered nutrients.

No double benefit

For purposes of section 45, a qualified facility does not include any facility which produces gas produced by qualified biogas property for which a credit determined under section 48 is allowed for the taxable year or any prior taxable year.

This modification is effective for property placed in service after December 31, 2020. The modification terminates with the rest of present law section 48 as described below.

Clean hydrogen

The modification adds property used in a qualified clean hydrogen production facility to the section 48 energy investment credit. A qualified clean hydrogen production facility has the same meaning as the term used in the new clean hydrogen production credit, described later in this document. The credit rate is 6 percent, in the case of qualified clean hydrogen (as defined in the clean hydrogen production credit) which is produced through a process that, as compared to hydrogen produced by steam methane reforming, achieves a percentage reduction in lifecycle greenhouse gas emissions which is at least 50 percent but less than 75 percent. If the percentage reduction is at least 75 percent but less than 85 percent, the credit rate is 7.5 percent. If the percentage reduction is at least 85 percent but less than 95 percent, the credit rate is 10.2 percent. If the percentage reduction is at least 95 percent, the credit rate is 30 percent.

The Secretary is required to issue regulations providing for the recapture of any credit under the modification where the applicable reduction in lifecycle greenhouse gas emissions is not satisfied. A qualified clean hydrogen facility does not include any facility for which a general business credit has been allowed for the taxable or any prior taxable year which is

[2] As defined in sec. 48K(c)(3).

[3] This includes biological reactors, crystallizers, reverse osmosis membranes and other water purifiers, evaporators, distillers, decanter centrifuges, and equipment that facilitates the process of dissolved air flotation, ammonia stripping, gasification, or ozonation.

properly allocable to any credit determined under section 48 (other than pursuant to this modification) or under sections 45, 45J, or 45Q.

The phase-out rule that applies to the clean fuel production credit also applies when determining the investment credit with respect to property used in a qualified clean hydrogen production facility.

Effective Date

This modification is effective for property placed in service after December 31, 2020.

Extension of present law energy investment credit

The Chairman's modification extends present law section 48 through 2023 and restores the credit rate to 30 percent. The Chairman's modification increases the credit rate for equipment to produce energy from a geothermal deposit to 30 percent. These changes are for eligible property, the construction of which begins before January 1, 2024.

6. Modification to item II.A. of the Chairman's Mark relating to the Clean Fuel Production Credit

The Chairman's modification modifies the clean fuel production credit to provide that the base credit rate is $2.00 per gallon (or gallon equivalent) for sustainable aviation fuel. "Sustainable aviation fuel" is a liquid fuel that (1) consists of synthesized hydrocarbons, (2) meets the requirements of either ASTM International Standard D7566 or the Fischer Tropsch provisions of ASTM International Standard D1655, Annex, (3) is derived from biomass, waste streams, renewable energy sources, or gaseous carbon oxides and (4) is not derived from palm fatty acid distillates. The modification is effective for aviation fuel produced after December 31, 2022.

Sustainable aviation fuel credit

For fuel produced prior to January 1, 2023, the Chairman's modification creates a new general business credit, the sustainable aviation fuel credit. For this purpose, "sustainable aviation fuel" is a liquid fuel that (1) consists of synthesized hydrocarbons, (2) meets the requirements of either ASTM International Standard D7566 or the Fischer Tropsch provisions of ASTM International Standard D1655, Annex, (3) is derived from biomass, waste streams, renewable energy sources, or gaseous carbon oxides and (4) is not derived from palm fatty acid distillates.

In addition, to be sustainable aviation fuel, the liquid fuel must achieve at least a 50 percent lifecycle greenhouse gas reduction in comparison with petroleum-based jet fuel under one of the specified methodologies. It must be shown that the fuel production pathway achieves at least a 50 percent reduction under either (1) the lifecycle methodology for sustainable aviation fuels adopted by the International Civil Aviation Organization ("ICAO") with the agreement of the United States, or (2) another methodology that the Secretary, in consultation with the Administrator of the Environmental Protection Agency ("EPA Administrator"), determines is reflective of the latest scientific understanding of lifecycle greenhouse gas emissions and is as

stringent as the ICAO methodology. All methodologies are to take into account aggregate attributional core lifecycle emissions and the positive induced land use change values. For purposes of (2), the Secretary, in consultation with the EPA Administrator, is required to adopt at least one methodology for testing lifecycle greenhouse gas emissions within 24 months after the date of enactment of the proposal.

Calculation of the credit

The sustainable aviation fuel credit for the taxable year is, with respect to each gallon of sustainable aviation fuel which is used by the taxpayer in the production of a qualified mixture, (1) a base credit amount of $1.50 plus (2) the applicable supplementary credit amount.

The applicable supplementary credit amount is one cent for every percentage point above 50 percent for which the aviation fuel is certified, as described below, to reduce emissions as in comparison with petroleum jet fuel. The maximum applicable supplementary amount is 50 cents.

A "qualified mixture" means a mixture of sustainable aviation fuel and kerosene which (1) is sold by the taxpayer producing such mixture for use in an aircraft that has fuel uplift in the United States or (2) is used by the taxpayer producing such mixture in an aircraft that has fuel uplift in the United States. The sale or use must be in the trade or business of the taxpayer for the taxable year in which such sale or use occurs.

Certification requirements

No credit shall be allowed unless the taxpayer meets the certification requirements demonstrating that the sustainable aviation fuel satisfies one of the lifecycle greenhouse gas emissions reduction tests identified by ICAO or the Secretary, as described above. For purposes of the ICAO methodology, the taxpayer is to obtain from the fuel producer a certification from a sustainability certification scheme approved by the ICAO demonstrating that (1) the fuel conforms with the Carbon Offsetting and Reduction Scheme for International Aviation's sustainability criteria and (2) the traceability and information transmission requirements approved by the ICAO with the agreement of the United States. For purposes of the alternative methodology approved by the Secretary, the taxpayer shall obtain from the fuel producer a certification that (1) the fuel has been determined by the EPA to meet the specified requirements and (2) that the fuel conforms with the sustainability criteria and the traceability and information transmission requirements that the Secretary, in consultation with the EPA Administrator, determines are equivalent to those necessary to claim emissions reductions from sustainable aviation fuel use under the Carbon Offsetting Reduction Scheme for International Aviation adopted by the ICAO with the agreement of the United States.

Sunset

The sustainable aviation fuel credit does not apply to any sale or use after December 31, 2022.

Renewable diesel credit for aviation eliminated

The Chairman's modification eliminates the category of renewable diesel relating to aviation fuel meeting Department of Defense specifications for military fuel or an ASTM for aviation turbine fuel.

Effective Date

The proposal applies to taxable years ending after the date of enactment.

7. Modification to item II.B.3. of the Chairman's Mark relating to electric vehicle credits

Further modifications to the EV credit

EV credit increase

The Chairman's modification provides an additional credit amount of $2,500 for new qualified plug-in electric drive motor vehicles for which the final assembly is at a facility whose production workers are members of or represented by a labor organization.

Chairman's modification also provides an additional credit amount of $2,500 for new qualified plug-in electric drive motor vehicles for which the final assembly is at a facility in the United States before 2026. For vehicles sold after December 31, 2025, the base amount of credit for new qualified plug-in electric drive motor vehicles is increased from $2,500 to $5,000, and final assembly of a new qualified plug-in electric drive motor vehicle must occur in the United States.

Therefore, under the Chairman's modification a new qualified plug-in electric drive motor vehicle is eligible for a maximum credit of $12,500, for a vehicle assembled in the United States at a facility whose production workers are members of or represented by a labor organization.

Vehicle price limitation

In addition, the Chairman's modification requires that a new qualified plug-in electric drive motor vehicle purchased by the taxpayer has a manufacturer's suggested retail price (MSRP) of $80,000 or less. That is, the credit amount is reduced to $0 if the MSRP for the vehicle is more than $80,000.

The changes to credit amounts are effective for vehicles acquired after December 31, 2021.

Qualified electric transportation options

The Chairman's modification expands the credit for qualified commercial electric vehicles to include qualified electric transportation options. Thus, the credit amount for a qualified electric transportation option is the lesser of 30 percent of the basis of a qualified

vehicle or the incremental cost of such vehicle. The phase-out of the qualified commercial electric vehicle applies to qualified electric transportation options.

A qualified electric transportation option is any vehicle used in any manner of transportation that meets the certain criteria. The vehicle must be capable of moving passengers, cargo, or property and be acquired for use or lease by taxpayer with original use commencing with the taxpayer. A qualified electric transportation option must be powered by an integrated, on-board electric propulsion system that is the primary source of propulsion and is capable of powering the vehicle (including its components and accessories) for not less than 2/3 of the maximum operating period between recharging or refueling such vehicle. If the qualified electric transportation option derives power from the on-board combustion of fuel, that fuel must be renewable.

In addition, a qualified electric transportation option must be manufactured for sale in commercial quantities with reasonable expectation of profits, and must comply with any applicable safety or air quality standards as determined by the Secretary in coordination with the Secretary of Transportation, Secretary of Homeland Security, and the Administrator of the EPA.

A qualified electric transportation option may not be a new qualified plug-in electric drive motor vehicle[4] unless the vehicle (1) has a gross vehicle weight rating between 3,000 and 14,000 pounds, (2) has no more than 2 seats (including the driver's seat), (3) uses the majority of interior space to carry cargo, (4) is primarily used for delivering commercial cargo, and (5) does not use any energy derived from the on-board combustion of fuel.

Renewable fuel for this purpose is any fuel at least 85 percent of the volume consists of one or more of: (1) ethanol; (2) biodiesel;[5] (3) advanced biofuel;[6] (4) renewable natural gas; or (5) hydrogen.

For purposes of calculating the credit amount, the cost of a qualified electric transportation option does not include costs relating to any component or feature which is not integral or does not improve efficiency or range of the option's electric propulsion.

The Chairman's modification applies to options acquired after December 31, 2021.

Additional reporting and math error authority

The Chairman's modification requires that upon sale of a new qualified plug-in electric drive motor vehicle the seller report the following information to the purchaser and IRS: (1) purchaser's name and taxpayer identification number; (2) VIN of the qualified vehicle; (3) battery capacity of the vehicle; (4) verification that original use of the vehicle commences with

[4] As defined under sec. 30D(d)(1).

[5] As defined in sec. 40A(d)(1).

[6] As defined in 42 U.S.C. sec. 7545(o)(1)(B).

the purchaser; and (5) maximum credit purchaser is eligible to claim based on vehicle qualifications.

If, in accordance with applicable rules from the Department of Transportation, the vehicle is not assigned a VIN, a VIN is not required to be reported.

Math error authority under section 6213 is provided for mismatches between return information included for purposes of the 30D credit and seller reporting information in regards to VIN (where applicable), battery capacity, and maximum credit amount. Pursuant to math error authority, the IRS may, in the even of a mathematical or clerical error, assess additional tax without issuance of a notice of deficiency as otherwise required.[7]

These reporting requirements and additional math error authority apply for vehicles to which item II.B.3. of the Chairman's Mark as modified applies, including new qualified plug-in electric drive motor vehicles, 2- or 3- wheeled plug-in electric vehicles, qualified commercial electric vehicles, and qualified electric transportation options. These changes are effective for vehicles acquired after December 31, 2021

8. Modification to item III.A. of the Chairman's Mark relating to the credit for new energy efficient residential buildings

The Chairman's modification modifies the prevailing wage requirements for labor used in the construction of a qualified residence for purposes of section 45L. Prevailing wage requirements only apply to the construction of multifamily unit dwellings.

No double benefit

For purposes of section 45L, a qualified residence does not include any dwelling unit for which a deduction determined under section 179D is allowed for the taxable year.

9. Modification to item III.B. of the Chairman's Mark relating to the energy efficient home improvement credit

The Chairman's modification clarifies that, in the case of qualified property (other than a building envelope improvement), if no standard established by the Consortium for Energy Efficiency applies the Secretary, in consultation with the EPA Administrator, shall establish an equivalent standard.

10. Modification to item III.C. of the Chairman's Mark relating to enhancement of energy efficient commercial buildings deduction

The Chairman's modification further modifies the 179D deduction for energy efficient commercial buildings.

[7] Sec. 6213(b).

Retrofits

The Chairman's modification allows an election by the taxpayer to use Energy Star Portfolio Manager benchmarks, rather than Reference Standard 90.1 for certification of a retrofit plan as part of the requirement under 179D(c)(1)(D) for energy efficient commercial building property.

For this purpose, a qualified existing building is a building which was originally placed in service not less than five years before the establishment of the retrofit plan.

The rules in the Chairman's Mark relating to the allocation of the deduction to the person primarily responsible for designing energy efficient commercial building property in lieu of the eligible entity that owns such property also apply to retrofit upgrades.

Multifamily buildings

The Chairman's modification allows all multifamily housing structures to qualify for the 179D deduction, including multifamily housing structures that do not fall within the scope of Reference Standard 90.1. For multifamily housing structures to which Reference Standard 90.1 does not apply the Secretary, in consultation with the Department of Energy, shall provide a comparable standard.

11. Modification to Item IV.A of the Chairman's Mark

The Chairman's modification strikes Clean Energy Bonds from the mark.

B. Additions to the Chairman's Mark

1. Clean hydrogen production credit

The Chairman's modification creates a new credit for hydrogen, the "clean hydrogen production credit." For any taxable year, the credit is an amount equal to the product of (1) the applicable amount multiplied by (2) the kilograms of qualified clean hydrogen (a) produced by the taxpayer at a qualified clean hydrogen production facility during the ten-year period beginning on the date the facility was placed in service and (b) sold by the taxpayer to an unrelated person, or used by the taxpayer, during the taxable year.

The "applicable amount" is equal to the applicable percentage of $3.00, rounded to the nearest 0.1 cent.[8] The "applicable percentage" is 20 percent in the case of qualified clean hydrogen which is produced through a process that, as compared to hydrogen produced by steam methane reforming, achieves a percentage reduction in lifecycle greenhouse gas emissions which is at least 50 percent but less than 75 percent. If the percentage reduction is at least 75 percent but less than 85 percent, the applicable percentage is 25 percent. If the percentage reduction is at least 85 percent but less than 95 percent, the applicable percentage is 34 percent. If the percentage reduction is at least 95 percent, the applicable percentage is 100 percent.

The amount of the credit with respect to any qualified clean hydrogen facility for any taxable year shall be reduced in a manner similar to the reduction applied under section 45(b)(3)(relating to credit reductions for grants, tax-exempt bonds, subsidized energy financing, and other credits).

Definitions

The term "lifecycle greenhouse gas emissions" has the same meaning given such term under subparagraph (H) of section 211(o)(1) of the Clean Air Act as in effect on the date of enactment of this proposal.

"Qualified clean hydrogen" means hydrogen that is produced through a process that, as compared to hydrogen produced by steam-methane reforming of non-renewable natural gas, achieves a percentage reduction in lifecycle greenhouse gas emissions of at least 50 percent. The term does not include any hydrogen which is properly allocable to another general business credit or under subchapter B of chapter 65 of subtitle F (such as the alternative fuel excise tax credit and payment provisions).

A "qualified clean hydrogen production facility" is a facility owned by the taxpayer:

(1) which produces qualified clean hydrogen which, with respect to any taxable year, is sold by the taxpayer to an unrelated person or used by the taxpayer, and (2) which satisfies certain wage

[8] The $3.00 amount is adjusted for inflation by multiplying such amount by the inflation adjustment factor (as determined under section 45(e)(2) by substituting "2020" for "1992") the calendar year in which the sale or use of the qualified clean hydrogen occurs, rounded to the nearest 0.1 cent.

and workforce requirements (as outlined in the Chairman's mark). The phase-out that applies to the clean fuel production credit also applies for purposes of the clean hydrogen production credit.

The term "steam-methane reforming" means a hydrogen production process in which high-temperature steam is used to produce hydrogen from natural gas, without carbon capture and sequestration.

Special rules

Rules similar to the rules of paragraphs (3) and (4) of section 45(e) apply for purposes of the proposal.[9]

No credit is allowed under this section with respect to qualified clean hydrogen that is produced outside of the United States or any possession of the United States.

Guidance

Not later than one year after the date of enactment, the Secretary, in consultation with the Secretary of Energy and EPA Administrator shall publish guidance prescribing methods for determining the credit based on lifecycle greenhouse gas emissions.

Effective Date

The proposal applies to hydrogen used or sold after December 31, 2020.

2. Bonds for carbon capture and storage and direct air capture projects

Present Law

Qualified private activity bonds are tax-exempt private activity bonds issued to provide financing for specified privately used facilities. The definition of a qualified private activity bond includes an exempt facility, qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond.[10]

[9] Paragraph (3) of section 45(e), relating to production attributable to the taxpayer, provides that "[i]n the case of a facility for which more than one person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility." Paragraph (4) of section 45(e) addresses related persons, providing that "[p]ersons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group."

[10] Sec. 141(e).

Exempt facility bonds are often used to finance infrastructure projects. To qualify as an exempt facility bond, 95 percent of the net proceeds must be used to finance an eligible facility.[11] Facilities eligible for this financing include the following:

- Airports,
- Ports (docks and wharves),
- Mass commuting facilities,
- Facilities for the furnishing of water,
- Sewage facilities,
- Solid waste disposal facilities,
- Qualified residential rental projects,
- Facilities for the local furnishing of electric energy or gas,
- Local district heating or cooling facilities,
- Qualified hazardous waste facilities,
- High-speed intercity rail facilities,
- Environmental enhancements of hydro-electric generating facilities,
- Qualified public educational facilities,
- Qualified green building and sustainable design projects, and
- Qualified highway or surface freight transfer facilities.[12]

Generally, qualified private activity bonds are subject to a number of eligibility restrictions that do not apply to governmental bonds. For example, the aggregate volume of most qualified private activity bonds is restricted by annual State volume limitations (the "State volume cap").[13] For calendar year 2021, the State volume cap, which is indexed for inflation, equals $110 per resident of the State, or $324,995,000, if greater.[14]

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[11] Sec. 142(a).

[12] Sec. 142(a)(1)-(15).

[13] The following private activity bonds are not subject to the State volume cap: qualified 501(c)(3) bonds, exempt facility bonds for airports, docks and wharves, environmental enhancements for hydroelectric generating facilities, and exempt facility bonds for solid waste disposal facilities that are to be owned by a governmental unit. The State volume cap does not apply to 75 percent of exempt facility bonds issued for high-speed intercity rail facilities (100 percent if the high-speed intercity rail facility is to be owned by a governmental unit). Qualified veterans mortgage bonds, qualified public educational facility bonds, qualified green building and sustainable project design bonds, and qualified highway or surface freight transfer facility bonds also are not subject to the State volume cap, but the Code subjects such bonds to volume limitations specific to the category of bonds.

[14] Rev. Proc. 2020-45, 2020-46 I.R.B. 1016, p. 1022, November 9, 2020.

Description of Proposal

The proposal adds a new category of exempt facility bonds for carbon capture and storage and direct air capture projects. A "qualified carbon dioxide capture facility" means the eligible components of an industrial carbon dioxide facility and also includes direct air capture projects. The term "eligible component" means any equipment installed in an industrial carbon dioxide facility that satisfies certain requirements and is used for the purpose of capture, treatment and purification, compression, transportation or on-site storage of carbon dioxide produced by the industrial carbon dioxide facility, or integral or functionally related and subordinate to a process described in section 48B(c)(2) (relating to gasification technology) determined by substituting carbon dioxide for carbon monoxide in such section.

The term "industrial carbon dioxide facility" means a facility that emits carbon dioxide that is created as a result of any of the following processes: fuel combustion, gasification, bioindustrial, fermentation, or any manufacturing facility described in section 48B(c)(7). The eligible components of an industrial carbon dioxide facility are required to have a capture and storage percentage that is equal to or greater than 65 percent. In the case of an industrial carbon dioxide facility with a capture and storage percentage that is less than 65 percent, the percentage of the cost of the eligible components installed in such facility that may be financed with tax-exempt bonds may not be greater than the capture and storage percentage.

The State volume cap does not apply to 75 percent of exempt facility bonds issued for qualified carbon storage and direct air capture projects (100 percent if the facility is to be owned by a governmental unit).

Effective Date

The proposal is effective for obligations issued after December 31, 2021.

3. Elimination of negative effects on small businesses and certain individual taxpayers

Description of Proposal

After the implementation of any proposal in the Clean Energy for America Act, as modified in this document, the Secretary shall review the return of any individual taxpayer whose gross income is less than $400,000 for the year, or a business with fewer than 500 employees. If such taxpayer or business would have a year-over-year tax increase as a result of the Act, the Secretary shall provide a tax rebate to such individual or such business to the extent the taxpayer demonstrates an increase. In the case of an affected business taxed as a pass-through entity, the Secretary shall have authority to provide such rebates to any affected direct owner, regardless of the income of such owner. Aggregation rules apply.