DESCRIPTION OF THE CHAIRMAN'S MARK OF A PROPOSAL FOR A WASTE-HEAT-TO-POWER INVESTMENT TAX CREDIT

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on February 11, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

February 9, 2015
JCX-28-15

CONTENTS

INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of a proposal for a waste-heat-to-power investment tax credit. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the proposal.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of a Proposal for a Waste-Heat-to-Power Investment Tax Credit* (JCX-28-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Waste-Heat-to-Power Investment Tax Credit

Present Law

A nonrefundable, 10-percent business investment credit is allowed for the cost of new combined heat and power ("CHP") property placed in service prior to January 1, 2017.[2] CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 50 megawatts or a mechanical energy capacity of not more than 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

The otherwise allowable credit with respect to CHP property is reduced to the extent the property has an electrical capacity or mechanical capacity in excess of any applicable limits. Property in excess of the applicable limit (15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities) is permitted to claim a fraction of the otherwise allowable credit. The fraction is equal to the applicable limit divided by the capacity of the property. For example, a 45 megawatt property would be eligible to claim 15/45ths, or one third, of the otherwise allowable credit. Again, no credit is allowed if the property exceeds the 50 megawatt or 67,000 horsepower limitations described above.

Additionally, systems whose fuel source is at least 90 percent open-loop biomass and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

Description of Proposal

The proposal provides a 10-percent investment credit for qualified waste-heat-to-power property placed in service before January 1, 2017. Qualified waste-to-heat-power property is defined as property comprising a system that generates electricity through the recovery of a qualified waste heat resource. Qualified waste heat resources consists of exhaust heat from any

[2] Sec. 48. Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

industrial process that does not have as its primary purpose the production of electricity, and a pressure drop in any gas for an industrial or commercial process. Where waste-heat-to-power property is fully integrated into other industrial property, the amount eligible for credit is the incremental difference in cost between the property that has the ability to capture and convert waste heat to electricity and similar property that lacks such functionality. Waste-to-heat power capacity cannot be in excess of 50 megawatts.

Effective Date

The proposal is effective for property placed in service after the date of enactment.

B. Estimated Revenue Effects

Fiscal Years [Millions of Dollars]												
2015	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2015-20**	**2015-25**
-2	-7	-5	-2	-2	-1	[1]	[2]	[2]	[2]	[2]	-20	-19

NOTE: Details do not add to totals due to rounding.

[1] Loss of Less than $500,000.
[2] Gain of less than $500,000.

C. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[3] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[4] the property is not exempt from levy,[5] and the IRS has provided both notice of intention to levy[6] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[7] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[8] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[9]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[10]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases,

---

[3] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[4] *Ibid.*

[5] Sec. 6334.

[6] Sec. 6331(d).

[7] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[8] Secs. 6331(e) and 6343.

[9] Sec. 6321.

[10] Secs. 6331(d)(3) and 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[11]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[12] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[13] For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.[14]

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Bureau of Fiscal Service ("BFS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct the BFS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Description of Proposal

The proposal provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

Effective Date

The proposal is effective for payments made after 180 days after the date of enactment.

---

[11] Sec. 6330(f).

[12] Pub. L. No. 105-34.

[13] Sec. 6331(h)(3).

[14] Pub. L. No. 113-295, Division B.