

Calendar No. 46

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-23

**A BILL TO PROVIDE AN INVESTMENT TAX CREDIT FOR
WASTE HEAT TO POWER TECHNOLOGY**

APRIL 14, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 913]

The Committee on Finance, having considered an original bill, S. 913, to amend the Internal Revenue Code of 1986 to provide an investment tax credit for waste heat to power technology, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------|
| | Page |
| I. LEGISLATIVE BACKGROUND | 1 |
| II. EXPLANATION OF THE BILL | 2 |
| A. Waste-Heat-to-Power Investment Tax Credit (sec. 1 of the bill and sec. 48 of the Code) | 2 |
| B. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers (sec. 2 of the bill and sec. 6331 of the Code) | 4 |
| III. BUDGET EFFECTS OF THE BILL | 5 |
| IV. VOTES OF THE COMMITTEE | 7 |
| V. REGULATORY IMPACT AND OTHER MATTERS | 7 |
| VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED | 8 |

I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 913, a bill to amend the Internal Revenue Code of 1986 to provide an investment tax credit for waste heat to power technology, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

Background.—Based on a proposal recommended by Senators Carper and Heller, the Committee on Finance marked up original legislation (a bill to amend the Internal Revenue Code of 1986 to provide an investment tax credit for waste heat to power technology) on February 11, 2015, and, with a majority present, ordered the bill favorably reported.

Need for legislative action.—Waste heat is an industrial energy byproduct generated at factories across the country. Similar to combined heat and power (CHP) systems, waste heat to power (WHP) systems can convert otherwise wasted thermal energy into electricity, limiting the environmental consequences of continued reliance on power generated from fossil fuels. While both technologies involve the use of otherwise wasted heat, combined heat and power systems are currently eligible for a 10 percent business investment tax credit. Both CHP and WHP systems reduce the need for additional energy and fuel consumption by reducing the amount of wasted thermal energy, but they are treated differently for tax purposes.

In addition, it has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. The permissible percentage of payments to a Medicare provider subject to levy should be increased.

II. EXPLANATION OF THE BILL**A. WASTE-HEAT-TO-POWER INVESTMENT TAX CREDIT (SEC. 1 OF THE BILL AND SEC. 48 OF THE CODE)****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, 2017.¹ 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 me-

¹Sec. 48. Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

chanical 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).

Waste-heat-to-power systems, including systems that generate electricity through the recovery of exhaust heat from industrial processes that do not have as a primary purpose the production of electricity, do not qualify for tax incentives.

REASONS FOR CHANGE

Waste heat is an industrial energy byproduct generated at factories across the country. Companies can invest in technology that converts this wasted heat—that would otherwise be released into the atmosphere—into usable electricity, but often these investments are very costly. Tax credits are one way to reduce costs and encourage the deployment of this clean technology.

EXPLANATION OF PROVISION

The provision provides a 10-percent investment credit for qualified waste-heat-to-power property placed in service before January 1, 2017. Qualified waste-heat-to-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 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-heat-to-power capacity cannot be in excess of 50 megawatts.

EFFECTIVE DATE

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

B. INCREASE CONTINUOUS LEVY AUTHORITY ON PAYMENTS TO MEDICARE PROVIDERS AND SUPPLIERS (SEC. 2 OF THE BILL AND SEC. 6331 OF THE CODE)

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.² Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,³ the property is not exempt from levy,⁴ and the IRS has provided both notice of intention to levy⁵ 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")⁶ at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.⁷ 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.⁸

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.⁹

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, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.¹⁰

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997¹¹ 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

²Sec. 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.

³*Ibid.*

⁴Sec. 6334.

⁵Sec. 6331(d).

⁶Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

⁷Secs. 6331(e) and 6343.

⁸Sec. 6321.

⁹Secs. 6331(d)(3) and 6861.

¹⁰Sec. 6330(f).

¹¹Pub. L. No. 105-34.

sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.¹² 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.¹³

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.

REASONS FOR CHANGE

It has also been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. Consequently, the Committee believes that it is appropriate to increase the permissible percentage of payments to a Medicare provider subject to levy.

EXPLANATION OF PROVISION

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

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, as amended (the "Budget Act"), the following statement is made concerning the estimated budget effects of the revenue provisions of the bill as reported.

The bill is estimated to reduce Federal fiscal year budget receipts by the following amounts for the period 2015–2025:

¹²Sec. 6331(h)(3).

¹³Pub. L. No. 113–295, Division B.

ESTIMATED BUDGET EFFECTS OF
A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986
TO PROVIDE AN INVESTMENT TAX CREDIT FOR WASTE HEAT TO POWER TECHNOLOGY,
AS REPORTED BY THE COMMITTEE ON FINANCE

Fiscal Years 2015 - 2025

(Millions of Dollars)

| Provision | Effective | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2015-20 | 2015-25 |
|---------------------------------------------------------------------------------------------------|---------------|-----------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|
| 1. Provide an Investment Tax Credit for Waste-Heat-to-Power Technology (sunset 12/31/16)..... | ppisa DOE | -2 | -7 | -5 | -2 | -2 | -1 | [1] | [2] | [2] | [2] | [2] | -20 | -19 |
| 2. Increase Continuous Levy Authority to 35% on Payments to Medicare Providers and Suppliers..... | pma 180da DOE | --- | 6 | 6 | 6 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 32 | 67 |
| NET TOTAL | | -2 | -1 | 1 | 4 | 5 | 6 | 7 | 7 | 7 | 7 | 7 | 12 | 48 |

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2015.

Legend for "Effective" column:

DOE = date of enactment

pma = payments made after

ppisa = property placed in service after

180da = 180 days after

[1] Loss of less than \$500,000.

[2] Gain of less than \$500,000.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

BUDGET AUTHORITY

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

TAX EXPENDITURES

In compliance with section 308(a)(1) of the Budget Act, the Committee states that certain provisions of the bill as reported affect the levels of tax expenditures (see revenue table in part A., above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 402 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the bill was ordered favorably reported by voice vote on February 11, 2015. Senator Toomey was separately listed as voting against adoption of the provision.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

Impact on individuals and businesses, personal privacy and paperwork

The bill provides an investment tax credit for waste-heat-to-energy property. It also increases the IRS's continuous levy authority on payments to Medicare providers and suppliers. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).