



TaxNewsFlash

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Legislative update: Senate passes CHIPS bill, includes advanced investment tax credit for semiconductor manufacturing

The U.S. Senate today passed H.R. 4346, “The CHIPS and Science Act of 2022,” by a bipartisan vote of 64 to 33.

Division A of the bill, the “CHIPS Act,” includes a 25% advanced investment tax credit (ITC) for certain investments in semiconductor manufacturing. Eligible investments would include investments in the manufacturing of semiconductors, as well as in the manufacturing of the specialized tooling equipment required in the semiconductor manufacturing process. Eligible taxpayers would be able to elect to treat the credit as a payment against tax (“direct pay”). The credit generally would be available for qualifying property placed in service after December 31, 2022, for which construction begins before January 1, 2023.

KPMG observation

The section 48D tax credit in the CHIPS Act is similar to a proposal that was included in H.R. 5376, the “Build Back Better Act,” that was approved by the House on November 19, 2021, by a 220-213 vote (and has not yet received Senate consideration). One difference is that the proposal contained in the CHIPS Act does not include the prevailing wage and apprenticeship requirements and the associated tier credit structure that were in H.R. 5376; the House-passed proposal offered a 5% ITC if wage and workforce requirements were not met and 25% credit if a project met such requirements. In addition, unlike the prior House-approved proposal, the CHIPS Act would require a recapture of the credit if a taxpayer who has claimed the credit enters into a transaction resulting in the expansion of a chip manufacturing facility in the People’s Republic of China (or certain foreign “countries of concern”) within 10 years of claiming the credit.

Notably, the Senate bill includes a refundability feature through a “direct pay” election. Direct pay was included in many of the tax credit proposals contained in the House-approved “Build Back Better Act.” The concept is designed to address the fact that, in many cases, project developers do not have sufficient tax liability to use available credits and must rely on tax equity financing to assist in financing their projects. A reduction in the reliance on tax equity, which could be particularly important for a new credit which the tax equity market may be slower to embrace, is generally a reason cited by supporters of direct pay. The direct pay provision would likely require a substantial amount of IRS guidance to implement and administer. If the CHIPS Act is enacted

containing this direct pay proposal, the guidance and implementation process is likely to be closely watched to determine if that process could provide a workable framework for the implementation of any additional refundable business credits that might be enacted in the future.

Finally, the effective date of the proposal provides that qualifying property that is placed in service after 2022 and that began construction prior to 2027 is eligible for the credit. Property on which construction has already begun can qualify but, if construction began prior to enactment, only the portion of the basis attributable to construction commenced after enactment would be eligible. For facilities already under construction, it would be important to determine when costs are incurred in order to conclude whether they are properly includable in the credit eligible basis.

What's next?

The House and Senate must pass identical versions of a bill, and the bill must be signed by the president, for that bill to become law.

The bill the Senate passed today is vastly different than the version of H.R. 4346 that previously passed the House. The House version of H.R. 4346 related to Supreme Court security; for procedural reasons, the Senate adopted a "strip and replace" amendment in order to use H.R. 4346 as the vehicle for today's legislation.

Thus, the House must pass identical legislation to what the Senate passed today before sending the legislation to the president. The House is expected to consider the Senate bill as early as later this week.

Documents

- [Bill text](#) [PDF 1.54 MB]
- [Section-by-section summary](#) [PDF 787 KB]
- [Congressional Budget Office \(CBO\) cost estimate](#) [PDF 152 KB]
- [Statement by President Biden](#)

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