

Part IV – Items of General Interest

Federal Income Tax Treatment of Certain Amounts Paid or Incurred Pursuant to Agreements with the Department of Commerce Required Under the CHIPS Act of 2022

Announcement 2024-40

This announcement confirms for purposes of § 48D of the Internal Revenue Code (Code)¹ that amounts paid or incurred by a taxpayer for the construction, expansion, or modernization of advanced manufacturing facilities pursuant to an agreement entered into with the United States Department of Commerce (Commerce Department) under 15 U.S.C. 4652(a)(6)(C)² will not fail, solely by reason of such agreement, to constitute a “qualified investment” for purposes of determining the amount of any advanced manufacturing investment credit under § 48D (§ 48D credit).

Section 48D(a) provides that the § 48D credit is an amount equal to 25 percent of the qualified investment for any taxable year with respect to any advanced manufacturing facility of an eligible taxpayer. Section 48D(b)(1) provides that the “qualified investment” with respect to any advanced manufacturing facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year that is part of an advanced manufacturing facility. The basis determined with respect to any qualified property includes capital expenditures, as

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code and the Income Tax Regulations.

² The CHIPS Act of 2022 (CHIPS Act), enacted as Division A of Public Law 117-167, 136 Stat. 1366, 1372-1399 (August 9, 2022), amended Division H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY 2021 NDAA), Public Law 116-283, 134 Stat. 3388, 4843-4860 (January 1, 2021) (15 U.S.C. 4651, et seq).

defined in § 263 and §§ 1.263(a)–1 through 1.263(f)–1, with respect to the qualified property.

The FY 2021 NDAA, as amended by the CHIPS Act, established a semiconductor incentives program administered by the Commerce Department (CHIPS Incentives Program) to incentivize investments in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.³ To implement the CHIPS Incentives Program, Congress authorized the Department of Commerce to provide funding via grants, cooperative agreements, loans, loan guarantees, and other transactions, which are collectively referred to as “awards” in this announcement. A taxpayer receiving an award under the CHIPS Incentives Program must enter into an agreement with the Commerce Department to ensure that the requirements of 15 U.S.C. 4652(a)(6)(C) are satisfied. The agreement will specify the terms and conditions of the award, including the circumstances under which the award will be “clawed back” by the Commerce Department. The agreement will include the condition that the award be used for the construction, expansion, or modernization of a facility as well as performance milestones for the receipt of the award.

Agreements entered into with the Commerce Department for awards related to the construction, expansion, or modernization of facilities are not long-term contracts

³ On September 25, 2023, the CHIPS Program Office, National Institute of Standards and Technology, Department of Commerce published a final rule, Preventing the Improper Use of CHIPS Act Funding, in the Federal Register (88 FR 65600) to add part 231, subchapter C, to 15 CFR chapter II to provide guidance under 15 USC 4651, et seq., including a clarification that semiconductor wafer production is included within the definition of semiconductor manufacturing.

within the meaning of § 460(f)(1) and § 1.460-1(b)(1)⁴ because § 460 and the regulations thereunder contemplate an agreement with a customer for the construction of the “subject matter” of the contract and payment of a “contract price” as compensation for the “subject matter” of the contract. See §§ 1.460-1(c)(3)(i) (date contract completed based in part on use of the subject matter of the contract by the customer for its intended purpose) and 1.460-4(b)(4) (definition of total contract price). A taxpayer that receives an award related to the construction of an advanced manufacturing facility under the CHIPS Incentives Program is constructing the facility on its own behalf. Moreover, the award does not purport to compensate the taxpayer for the cost of the project as the award amount typically does not approximate the project cost, much less provide the taxpayer a return. Consequently, grants and other taxable awards received,⁵ and costs paid or incurred, for the construction, expansion, or modernization of facilities pursuant to agreements to effectuate the requirements of 15 U.S.C. 4652 are not subject to the PCM under § 460(a) and § 1.460-4(b).

In addition, § 263(a) and § 1.263(a)-1(a) provide that no deduction is allowed for capital expenditures, such as amounts paid for new buildings, or for permanent

⁴ Section 460(f)(1) and § 1.460-1(b)(1) provide that the term “long-term contract” means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into. Section 1.460-1(a)(1) provides, in part, that a taxpayer generally must determine the income from a long-term contract using the percentage-of-completion method (PCM) described in § 1.460-4(b) and the cost allocation rules described in § 1.460-5. Under § 1.460-4(b)(2), allocable contract costs are deducted as incurred. Under § 1.460-1(d), long-term contract methods of accounting apply only to the gross receipts and costs attributable to long-term contract activities. Gross receipts and costs attributable to non-long-term contract activities generally must be taken into account using a permissible method of accounting other than a long-term contract method.

⁵ Government grants generally constitute gross income under § 61(a). See § 1.61-14 (clarifying that gross income encompasses various kinds of income not enumerated in the statute); Rev. Rul. 79-356, 1979-2 C.B. 28 (grants received from the Department of Housing and Urban Development for the installation of solar hot water systems are includible in gross income under § 61); see *also* § 118(a) and (b)(2) (providing that contributions to the capital of a corporation by any governmental entity (other than a contribution made by a shareholder as such) are not excludable from gross income under § 118(a)).

improvements or betterments made to increase the value of property. Section 1.263(a)-2(d)(1) provides that capital expenditures include amounts paid to acquire or produce buildings, machinery and equipment, and furniture and fixtures. Section 1.263(a)-1(b) provides that § 263A, which requires taxpayers to capitalize the direct and allocable indirect costs to property produced by the taxpayer and property acquired for resale, remains applicable.

Because agreements to effectuate the requirements of 15 U.S.C. 4652 are not long-term contracts subject to § 460, amounts paid or incurred for the construction, expansion, or modernization of advanced manufacturing facilities pursuant to such agreements that are capital expenditures under § 263(a) and the regulations thereunder may constitute qualified investment for purposes of the § 48D credit provided that the requirements of § 48D and the regulations thereunder are otherwise satisfied, including that amounts are paid or incurred for property constructed, reconstructed, or erected by the taxpayer, or acquired by the taxpayer, and the original use commences with the taxpayer.

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