



May 22, 2023

***Via the Federal eRulemaking Portal***

Jason P. Deirmenjian  
Office of the Associate Chief Counsel (Passthroughs and Special Industries)  
Internal Revenue Service  
1111 Constitution Avenue NW, Room 5203  
Washington, DC 20224

**Re: Proposed Rule, Internal Revenue Service, Treasury Department; Advanced Manufacturing Investment Credit (REG-120653-22)**

Dear Mr. Deirmenjian:

The U.S. Chamber of Commerce (the “Chamber”) welcomes the opportunity to comment on the Department of the Treasury’s proposed regulations to implement the new advanced manufacturing investment credit in section 48D of the Internal Revenue Code.<sup>1</sup> Congress enacted section 48D as part of the CHIPS Act of 2022<sup>2</sup> to incentivize domestic semiconductor manufacturing and secure our semiconductor supply chains.<sup>3</sup> Together with the supplementary program of direct grants for manufacturing administered by the Department of Commerce, the advanced manufacturing investment tax credit is critical to making semiconductor manufacturing in the United States more competitive with overseas locations that have attracted semiconductor investment.<sup>4</sup> The Chamber shares lawmakers’ views that domestic semiconductor manufacturing is critical to our national and economic security, and we offer the following comments and recommendations consistent therewith.

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<sup>1</sup> Advanced Manufacturing Investment Credit, REG-120653-22, 88 Fed. Reg. 17,451 (Mar. 23, 2023) (as corrected by 88 Fed. Reg. 23,369 (Apr. 17, 2023)). Unless otherwise indicated, all textual references to “section” herein are to sections of the Internal Revenue Code of 1986, as amended (“Code”).

<sup>2</sup> CHIPS Act of 2022, Pub. L. No. 117-167, Div. A, § 107, 136 Stat. 1366, 1393–99 (codified at I.R.C. § 48D).

<sup>3</sup> See, e.g., 168 Cong. Rec. S3688 (daily ed. July 26, 2022) (statement of Sen. Ben Cardin); Press Release, S. Comm. on Fin., 117th Cong., *Wyden, Crapo, Cornyn, Warner, Daines, Stabenow Introduce Bill to Boost Domestic Manufacturing of Semiconductors* (June 17, 2021), <https://www.finance.senate.gov/chairmans-news/wyden-crapo-cornyn-warner-daines-stabenow-introduce-bill-to-boost-domestic-manufacturing-of-semiconductors>.

<sup>4</sup> See Letter from Roger F. Wicker & Mark Kelly, Members, U.S. Senate, to Gina M. Raimondo, Sec’y of Com., U.S. Dep’t of Com. (Feb. 24, 2023), <https://www.kelly.senate.gov/wp-content/uploads/2023/02/Sec.-Raimondo-Letter-RE-CHIPS-Implementation-FINAL.pdf>.

## Expand the Proposed Definition of “Semiconductor” to Include Semiconductor-Related Materials

Section 48D generally provides an investment tax credit equal to 25% of the qualified investment for the taxable year with respect to any advanced manufacturing facility of an eligible taxpayer.<sup>5</sup> The statute defines the term “advanced manufacturing facility” for this purpose as a “facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment.”<sup>6</sup> The statute is conspicuously silent, however, on the meaning of the term “semiconductor” for purposes of section 48D—a fundamental question that the proposed regulations seek to answer.

The proposed regulations would define the term “semiconductor” narrowly for purposes of section 48D, consistent with the definition of semiconductor in 15 C.F.R. 231.117 referring to finished semiconductor products:

*Semiconductor* means, consistent with 15 CFR 231.117, an integrated electronic device or system most commonly manufactured using materials such as, but not limited to, silicon, silicon carbide, or III–V compounds, and processes such as, but not limited to, lithography, deposition, and etching. Such devices and systems include, but are not limited to, analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications.<sup>7</sup>

The Chamber believes that the proposed definition of “semiconductor” is inappropriately restrictive for purposes of section 48D and would effectively contravene the stated objectives of the CHIPS Act of 2022. A more appropriate approach, in our view, would be to expand the scope of the proposed definition to include key semiconductor materials, such as polysilicon and PFA. This would include polysilicon, silicon carbide, and III–V compounds, the electronic properties of which are controllable by the addition of, typically small, quantities of specific elements or dopants. It would also include ingots, boules, and wafers manufactured from such semiconductor materials. The rationale for this approach is twofold. First, certain materials like polysilicon and PFA are critical to the semiconductor industry. Polysilicon gives finished semiconductor products their semiconductor properties and, therefore, is as important to the supply of finished semiconductor products as are the finished semiconductor products themselves. Second, the stated objectives of the CHIPS Act of 2022 are to incentivize domestic semiconductor manufacturing and bolster our semiconductor supply chains—including those of semiconductor materials.<sup>8</sup>

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<sup>5</sup> I.R.C. § 48D(a).

<sup>6</sup> I.R.C. § 48D(b)(3).

<sup>7</sup> Prop. Treas. Reg. § 1.48D-2(k), 88 Fed. Reg. 17,451, 17,458–59 (Mar. 23, 2023).

<sup>8</sup> See *supra* note 4 and accompanying text.

## **Clarify the Meaning of “Subsystems” that Enable or Are Incorporated into the Manufacturing Equipment**

The proposed regulations would define the term “semiconductor manufacturing equipment” for purposes of section 48D as “the specialized equipment integral to the manufacturing of semiconductors and subsystems that enable or are incorporated into the manufacturing equipment.”<sup>9</sup> Thus, the proposed regulations as written appear to limit eligibility for the section 48D credit to the manufacture of finished or near-finished semiconductor manufacturing equipment. This would potentially exclude major components like lens and mirror assemblies, which are not only critical to the functioning of semiconductor manufacturing equipment but also specialized for incorporation into such equipment.

Given this concern about the scope of the proposed regulations’ definition of semiconductor manufacturing equipment, the Chamber recommends that the final regulations clarify the meaning of “subsystems that enable or are incorporated into the manufacturing equipment.” Specifically, the final regulations should make clear that such “subsystems” include major components that are both critical to the functioning of semiconductor manufacturing equipment and specialized for incorporation into such equipment. In a similar vein, the Chamber also recommends removing all instances of the term “finished” from the proposed definitions of “advanced manufacturing facility” and “principal purpose” for purposes of section 48D(b)(3).<sup>10</sup> Doing so would ensure eligibility for advanced manufacturing facilities that manufacture (i) key semiconductor materials that do not constitute a “finished semiconductor” and (ii) semiconductor manufacturing subsystems that are critical to the functioning of semiconductor manufacturing equipment and specialized for incorporation into such equipment.

## **Ensure that Partnerships and their Partners Can Fully Use the Section 48D Credit**

The proposed regulations would provide rules for calculating the amount of a taxpayer’s qualified investment under section 48D(b)(1), generally, and in the context of certain passthrough entities. 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 which is part of an advanced manufacturing facility.” The statute is silent, however, as to how a taxpayer’s basis in qualified property should be allocated in the context of passthrough entities (e.g., partnerships). To this end, the proposed regulations would clarify that a partner’s share of basis in the qualified property of a partnership is determined under the rules in Treasury regulations section 1.46–3(f), under which a partner is treated as the taxpayer with respect to its share of the basis of the partnership’s qualified property for calculating its qualified investment.<sup>11</sup> Thus, under the proposed regulations, a partner’s share of the partnership’s basis generally would be

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<sup>9</sup> Prop. Treas. Reg. § 1.48D-2(m), 88 Fed. Reg. 17,451, 17,459 (Mar. 23, 2023).

<sup>10</sup> See proposed Treasury regulations section 1.48D-4(b), (c).

<sup>11</sup> See Prop. Treas. Reg. § 1.48D-2(h)(2)(i), 88 Fed. Reg. 17,451, 17,458 (Mar. 23, 2023).

determined in accordance with the ratio in which the partners divide the general profits of the partnership.<sup>12</sup>

Semiconductor manufacturing projects are capital intensive by nature and, as a result, manufacturers may enter into partnerships with third parties to balance their investments. Not infrequently, these arrangements are structured as partnerships in which only one partner is intended to receive the section 48D credit proceeds, notwithstanding that the partnership itself may be funded by the contributing partners on a different basis (e.g., 50/50). As explained above, the proposed regulations generally would determine each partner's share of the partnership's basis in accordance with the ratio in which the partners divide the general profits of the partnership. Thus, in the case of a 50/50 joint venture, the partners would each share 50% of the basis in the partnership's qualified property, consistent with the partners' 50/50 split of the partnership's income; the proposed regulations would therefore contravene the intent of the partners that one of them receive the full section 48D credit because the basis allocation would limit the extent to which either partner could claim the credit to 50%.

To allow unrelated parties to enter into joint ventures with the flexibility to structure any section 48D credit benefits according to their commercial arrangements, the Chamber recommends a different approach: the final regulations should expressly permit the allocation of a partnership's basis in qualified property to one or more of its partners independent of the ratio in which the partnership's general profits are allocated. In no circumstances should the partnership's basis in qualified property be allocated to a partner who would not otherwise be entitled to claim the credit if it were to undertake the same activities on its own. Furthermore, the Chamber recommends that the partner(s) to whom the basis is allocated be treated as the applicable taxpayer(s) for purposes of the recapture rules in proposed Treasury regulations section 1.50-2 (rather than the partnership), because activities undertaken outside the joint venture by an unrelated partner should not trigger recapture of the section 48D credit claimed by another partner who is party to the joint venture.

### **Clarify the Application of the Effective Date**

Section 107(f)(1) of the CHIPS Act of 2022 specifies the effective date of section 48D, providing that the credit "shall apply to property placed in service after December 31, 2022, and, for any property the construction of which begins prior to January 1, 2023, only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after the date of enactment of this Act." This language presents interpretative and practical challenges when applied to the real-world construction or expansion of advanced manufacturing facilities, which warrant further attention.

Congress enacted section 48D as part of the CHIPS Act of 2022 to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. As the effective date of section 48D makes clear, however, Congress intended

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<sup>12</sup> See REG-120653-22, 88 Fed. Reg. 17,451, 17,452 (Mar. 23, 2023) (explanation of provisions).

certain existing projects already under construction to benefit from the credit as well—even those underway before August 9, 2022, the date of the law’s enactment. Additional guidance clarifying the application of the effective date is warranted for taxpayers with existing projects that were already under construction as of August 9, 2022. Different taxpayers maintain different recordkeeping and accounting systems, and some may be unable to practicably determine an accurate allocation of costs incurred before and after August 9, 2022.

## Conclusion

The Chamber commends the Department of the Treasury and Internal Revenue Service for their ongoing, collective efforts to implement the tax provisions in the CHIPS Act of 2022 through the promulgation of regulatory and other guidance. We appreciate your consideration of our comments and would welcome the opportunity to discuss them with you in further detail.

Sincerely,



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U.S. Chamber of Commerce



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Senior Vice President, Tax Policy  
U.S. Chamber of Commerce

cc: The Honorable Ronald L. Wyden, Chairman, Committee on Finance, United States Senate  
The Honorable Michael D. Crapo, Ranking Member, Committee on Finance, United States Senate  
The Honorable Jason T. Smith, Chairman, Committee on Ways and Means, United States House of Representatives  
The Honorable Richard E. Neal, Ranking Member, Committee on Ways and Means, United States House of Representatives  
The Honorable Lily L. Batchelder, Assistant Secretary (Tax Policy), U.S. Department of the Treasury  
William M. Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical), Internal Revenue Service  
Holly Porter, Associate Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service