

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2091

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 2011

Mr. BOSWELL introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Freight Rail Infra-  
5       structure Capacity Expansion Act of 2011”.

1 **SEC. 2. CREDIT FOR FREIGHT RAIL INFRASTRUCTURE CA-**  
2 **PACITY EXPANSION PROPERTY.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
4 chapter A of chapter 1 of the Internal Revenue Code of  
5 1986 (relating to business-related credits) is amended by  
6 adding at the end the following new section:

7 **“SEC. 45S. FREIGHT RAIL CAPACITY EXPANSION CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,  
9 the freight rail capacity expansion credit determined under  
10 this section for the taxable year is an amount equal to  
11 25 percent of the cost of the following property placed in  
12 service during the taxable year:

13 “(1) New qualified freight rail infrastructure  
14 property.

15 “(2) Qualified locomotive property.

16 “(b) NEW QUALIFIED FREIGHT RAIL INFRASTRUC-  
17 TURE PROPERTY.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘new qualified  
19 freight rail infrastructure property’ means qualified  
20 freight rail infrastructure property—

21 “(A) the construction or erection (or in the  
22 case of bridges and tunnels, any eligible bridge  
23 or tunnel replacement or expansion pursuant to  
24 paragraph (2)) of which is completed after the  
25 effective date of this section, or

1           “(B) which is acquired by the taxpayer  
2           after such date, but only if the original use of  
3           such property commences with the taxpayer.

4           “(2) EXCEPTION FOR PROPERTY REPLACING  
5           PROPERTY AT EXISTING LOCATION.—The term ‘new  
6           qualified freight rail infrastructure property’ does  
7           not include property which is replacing existing  
8           qualified freight rail infrastructure property if the  
9           replacement property is located at the site of the ex-  
10          isting property. The preceding sentence shall not  
11          apply to the replacement or expansion of a bridge or  
12          tunnel to allow for additional clearance, track, or  
13          other capacity enhancement where such clearance,  
14          track, or other capacity enhancement did not pre-  
15          viously exist.

16          “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-  
17          TURE PROPERTY.—

18                 “(A) IN GENERAL.—The term ‘qualified  
19                 freight rail infrastructure property’ means  
20                 property, whether or not owned by a railroad,  
21                 used in the movement of freight by rail—

22                         “(i) the cost of which is chargeable to  
23                         capital account (determined without regard  
24                         to section 179F), and

25                         “(ii) which constitutes—

1 “(I) railroad grading or tunnel  
2 bore (as defined in section 168(e)(4)),

3 “(II) tunnels or subways,

4 “(III) track, including ties, rails,  
5 ballast, or other track material,

6 “(IV) bridges, trestles, culverts,  
7 or other elevated or submerged struc-  
8 tures,

9 “(V) terminals, yards, roadway  
10 buildings, fuel stations, or railroad  
11 wharves or docks, including fixtures  
12 attached thereto, and equipment used  
13 exclusively therein,

14 “(VI) railroad signal, commu-  
15 nication, or other operating systems,  
16 including components of such systems  
17 that must be installed on locomotives  
18 or other rolling stock, or

19 “(VII) intermodal transfer or  
20 transload facilities or terminals, in-  
21 cluding fixtures attached thereto, and  
22 equipment used exclusively therein.

23 “(B) EXCLUSIONS.—The term ‘qualified  
24 freight rail infrastructure property’ shall not in-  
25 clude—

1 “(i) land,

2 “(ii) rolling stock, including loco-  
3 motives, or

4 “(iii) property used predominantly  
5 outside the United States, except that this  
6 clause shall not apply to any property de-  
7 scribed in section 168(g)(4).

8 “(c) QUALIFIED LOCOMOTIVE PROPERTY.—

9 “(1) IN GENERAL.—For purposes of this sec-  
10 tion, the term ‘qualified locomotive property’ means  
11 a locomotive, whether or not owned by a railroad,  
12 which—

13 “(A) is acquired by the taxpayer after the  
14 effective date of this section, but only if the  
15 original use of such property commences with  
16 the taxpayer,

17 “(B) is owned by, or leased to, a taxpayer  
18 which meets the capacity expansion requirement  
19 of paragraph (2) for the taxable year in which  
20 the locomotive is placed in service, and

21 “(C) meets the Environmental Protection  
22 Agency’s emission standards for locomotives  
23 and locomotive engines as in effect on Decem-  
24 ber 31, 2006.

1           “(2) CAPACITY EXPANSION REQUIREMENT.—A  
2 taxpayer meets the requirements of this paragraph  
3 with respect to any locomotive only if, on the last  
4 day of the taxable year in which such locomotive is  
5 placed in service, the total horsepower of all loco-  
6 motives owned by, or leased to, the taxpayer exceeds  
7 the total horsepower of all locomotives owned by, or  
8 leased to, the taxpayer on the last day of the pre-  
9 ceding taxable year. A determination under this  
10 paragraph shall be made pursuant to such reports as  
11 the Secretary, in consultation with the Surface  
12 Transportation Board, may prescribe.

13           “(3) SPECIAL RULE FOR THE LEASING OF LO-  
14 COMOTIVES.—In the case of the leasing of loco-  
15 motives, total horsepower under paragraph (2) shall  
16 be determined with respect to all locomotives owned  
17 by, or leased to, the lessee.

18           “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

19           “(1) DEFINITIONS.—For purposes of this sec-  
20 tion—

21           “(A) RAILROAD SIGNAL, COMMUNICATION,  
22 OR OTHER OPERATING SYSTEM.—The term  
23 ‘railroad signal, communication, or other oper-  
24 ating system’ means an appliance, method, de-  
25 vice, or system (including hardware and soft-

1           ware) which is used to operate a railroad or to  
2           improve safety or capacity of railroad oper-  
3           ations, including a signal, an interlocker, an  
4           automatic train stop, or a train control or cab-  
5           signal device.

6           “(B) INTERMODAL TRANSFER OR  
7           TRANSLOAD FACILITY OR TERMINAL.—The  
8           term ‘intermodal transfer or transload facility  
9           or terminal’ means a facility or terminal pri-  
10          marily utilized in the transfer of freight be-  
11          tween rail and any other mode of transpor-  
12          tation.

13          “(2) COORDINATION WITH OTHER CREDITS.—  
14          The cost of any property taken into account in de-  
15          termining the credit under this section may not be  
16          taken into account in determining a credit under any  
17          other provision of this title.

18          “(3) BASIS ADJUSTMENT.—If a credit is deter-  
19          mined under this section with respect to the cost of  
20          any qualified freight rail infrastructure property or  
21          qualified locomotive property, the basis of such prop-  
22          erty shall be reduced by the amount of the credit so  
23          determined.

1           “(4) SALE-LEASEBACKS.—If qualified freight  
2 rail infrastructure property or qualified locomotive  
3 property is—

4           “(A) originally placed in service by a per-  
5 son after December 31, 2011, and

6           “(B) sold and leased back by such person  
7 within 3 months after the property is originally  
8 placed in service (or, in the case of multiple  
9 units of property subject to the same lease,  
10 within 3 months after the date the final unit is  
11 placed in service, so long as the period between  
12 the time the first unit is placed in service and  
13 the time the last unit is placed in service does  
14 not exceed 12 months),

15 such property shall be treated as originally placed in  
16 service not earlier than the date on which such prop-  
17 erty is used under the lease referred to in subpara-  
18 graph (B).

19           “(5) RECAPTURE.—The benefit of any credit  
20 allowable under subsection (a) shall, under regula-  
21 tions prescribed by the Secretary, be recaptured with  
22 respect to any qualified locomotive property that is  
23 sold or otherwise disposed of by the taxpayer during  
24 the 5-year period beginning on the date on which  
25 such property is originally placed in service. The

1 preceding sentence shall not apply to locomotive  
2 property that is sold by and subsequently leased  
3 back to the taxpayer.

4 “(e) TERMINATION.—This section shall not apply to  
5 any property placed in service after December 31, 2016.”.

6 (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-  
7 tion 38(b) of the Internal Revenue Code of 1986 (relating  
8 to current year business credit) is amended by striking  
9 “plus” at the end of paragraph (35), by striking the period  
10 at the end of paragraph (36) and inserting “, plus”, and  
11 by adding at the end the following new paragraph:

12 “(37) the freight rail capacity expansion credit  
13 determined under section 45S.”.

14 (c) COORDINATION WITH SECTION 55.—Section  
15 38(c)(4)(B) of the Internal Revenue Code of 1986 is  
16 amended by striking “and” at the end of clause (viii), by  
17 striking the period at the end of clause (ix) and inserting  
18 “, and”, and by adding at the end the following new  
19 clause:

20 “(x) for taxable years ending after the  
21 effective date of this clause, the credit de-  
22 termined under section 45S.”.

23 (d) CLERICAL AMENDMENT.—The table of sections  
24 for subpart D of part IV of subchapter A of chapter 1  
25 of the Internal Revenue Code of 1986 is amended by in-

1 inserting after the item relating to section 45R the following  
2 new item:

“Sec. 45S. Freight rail capacity expansion credit.”.

3 (e) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to property placed in service after  
5 December 31, 2011.

6 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**  
7 **PROPERTY.**

8 (a) **IN GENERAL.**—Part VI of subchapter B of chap-  
9 ter 1 of the Internal Revenue Code of 1986 (relating to  
10 itemized deductions for individuals and corporations) is  
11 amended by inserting after section 179E the following new  
12 section:

13 **“SEC. 179F. ELECTION TO EXPENSE QUALIFIED FREIGHT**  
14 **RAIL INFRASTRUCTURE PROPERTY.**

15 “(a) **ALLOWANCE OF DEDUCTION.**—

16 “(1) **IN GENERAL.**—A taxpayer may elect to  
17 treat any amount paid or incurred for the acqui-  
18 sition, construction, or erection of qualified freight rail  
19 infrastructure property (as defined in section  
20 45S(b)(3)) as an amount not chargeable to capital  
21 account. Any amount so treated shall be allowed as  
22 a deduction for the taxable year in which such prop-  
23 erty was placed in service.

24 “(2) **COORDINATION WITH CREDIT.**—The  
25 amount to which the election under paragraph (1)

1 applies with respect to any property shall be reduced  
2 by an amount equal to the amount of any reduction  
3 in the basis of the property under section 45S(d)(3).

4 “(b) ELECTION.—An election under subsection (a)  
5 shall be made, with respect to each class of property for  
6 each taxable year, at such time and in such manner as  
7 the Secretary may prescribe by regulation. If a taxpayer  
8 makes such an election with respect to any class of prop-  
9 erty for any taxable year, the election shall apply to all  
10 qualified freight rail infrastructure property in such class  
11 placed in service during such taxable year. An election  
12 under this section shall not affect the character of any  
13 property for the purposes of section 45S.

14 “(c) DEDUCTION ALLOWED IN COMPUTING MINIMUM  
15 TAX.—For purposes of determining alternative minimum  
16 taxable income under section 55, the deduction under sub-  
17 section (a) for qualified freight rail infrastructure property  
18 shall be determined under this section without regard to  
19 any adjustment under section 56.

20 “(d) TERMINATION.—This section shall not apply to  
21 any property placed in service after December 31, 2016.”.

22 (b) DEDUCTION FOR CAPITAL EXPENDITURES.—  
23 Section 263(a)(1) of the Internal Revenue Code of 1986  
24 (relating to capital expenditures) is amended by striking  
25 “or” at the end of subparagraph (K), by striking the pe-

1 riod at the end of subparagraph (L) and inserting “, or”,  
 2 and by adding at the end the following new subparagraph:

3 “(M) expenditures for which a deduction is  
 4 allowed under section 179F.”.

5 (c) TECHNICAL AND CLERICAL AMENDMENTS.—

6 (1) Section 312(k)(3)(B) of the Internal Rev-  
 7 enue Code of 1986 is amended by striking “or  
 8 179E” each place it appears in the text or heading  
 9 thereof and inserting “179E, or 179F”.

10 (2) Paragraphs (2)(C) and (3)(C) of section  
 11 1245(a) of such Code are each amended by inserting  
 12 “179F,” after “179E,”.

13 (3) The table of sections for part VI of sub-  
 14 chapter B of chapter 1 of subtitle A of such Code  
 15 is amended by inserting after the item relating to  
 16 section 179E the following new item:

“Sec. 179F. Election to expense qualified freight rail infrastructure property.”.

17 (d) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to property placed in service after  
 19 December 31, 2011.

20 **SEC. 4. WAGE RATE REQUIREMENTS.**

21 The taxpayer shall not be allowed a credit under sec-  
 22 tion 45S of the Internal Revenue Code of 1986 (as added  
 23 by section 2 of this Act) or a deduction under  
 24 section 179F of such Code (as added by section 3 of this  
 25 Act) until the taxpayer certifies in writing to the Secretary

1 of the Treasury that all laborers and mechanics employed  
2 by contractors and subcontractors in construction, re-  
3 placement, or expansion of new qualified freight rail infra-  
4 structure property for which such credit or deduction (as  
5 the case may be) is claimed were paid wages at rates not  
6 less than those prevailing at the time the construction, re-  
7 placement, or expansion work was performed on similar  
8 work in the locality as determined by the Secretary of  
9 Labor in accordance with subchapter IV of chapter 31 of  
10 part A of subtitle II of title 40, United States Code (com-  
11 monly referred to as the “Davis-Bacon Act”).

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