

118TH CONGRESS  
1ST SESSION

# S. 3486

To amend the Internal Revenue Code of 1986 to disallow companies associated with foreign adversaries from receiving the advanced manufacturing production credit.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2023

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to disallow companies associated with foreign adversaries from receiving the advanced manufacturing production credit.

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 “Protecting American  
5 Advanced Manufacturing Act”.

1 **SEC. 2. PROHIBITION ON ALLOWANCE OF ADVANCED MAN-**  
 2 **UFACTURING PRODUCTION CREDIT FOR ELI-**  
 3 **GIBLE COMPONENTS PRODUCED BY COMPA-**  
 4 **NIES ASSOCIATED WITH FOREIGN ADVER-**  
 5 **SARIES.**

6 (a) IN GENERAL.—Section 45X of the Internal Rev-  
 7 enue Code of 1986 is amended by adding at the end the  
 8 following new subsection:

9 “(e) PROHIBITION ON ALLOWANCE OF CREDIT FOR  
 10 ELIGIBLE COMPONENTS PRODUCED BY COMPANIES AS-  
 11 SOCIATED WITH FOREIGN ADVERSARIES.—

12 “(1) IN GENERAL.—No credit shall be allowed  
 13 under subsection (a) with respect to any eligible  
 14 component which is produced by a disqualified enti-  
 15 ty.

16 “(2) DISQUALIFIED ENTITY.—

17 “(A) IN GENERAL.—For purposes of this  
 18 subsection, the term ‘disqualified entity’ means  
 19 any entity described in subparagraphs (B)  
 20 through (D).

21 “(B) FOREIGN ADVERSARY PARTIES.—The  
 22 entities described in this subparagraph consist  
 23 of the following:

24 “(i) The government of a foreign ad-  
 25 versary, any agency or government instru-  
 26 mentality of a foreign adversary, or any

1 entity which is directly or indirectly owned,  
2 controlled, or directed by any such govern-  
3 ment, agency, or government instrumen-  
4 tality.

5 “(ii) Any entity organized under the  
6 laws of a foreign adversary (or any polit-  
7 ical subdivision thereof) or whose head-  
8 quarters is located within a foreign adver-  
9 sary.

10 “(C) OWNED, CONTROLLED, DIRECTED, OR  
11 INFLUENCED BY FOREIGN ADVERSARY PAR-  
12 TIES.—The entities described in this subpara-  
13 graph consist of the following:

14 “(i) Any entity for which, on any date  
15 during the taxable year, not less than 10  
16 percent of the outstanding equity interests  
17 (by value, voting, governance, board ap-  
18 pointment, or similar rights or influence)  
19 are held directly or indirectly by, or on be-  
20 half of, 1 or more of the entities described  
21 in subparagraph (B), including through in-  
22 terests in co-investment vehicles, joint ven-  
23 tures, or similar arrangements.

24 “(ii) Any entity which is directly or  
25 indirectly controlled, directed, or materially

1 influenced by any entity described in sub-  
2 paragraph (B).

3 “(iii) Any entity for which the actions,  
4 management, ownership, or operations of  
5 such entity are subject to the direct influ-  
6 ence of an entity described in subpara-  
7 graph (B).

8 “(iv) Any entity for which an interest  
9 in such entity is held by an entity de-  
10 scribed in subparagraph (B) (referred to in  
11 this clause as the ‘beneficiary firm’) as a  
12 derivative financial instrument or through  
13 a contractual arrangement between the  
14 beneficiary firm and such entity, including  
15 any financial instrument or other contract  
16 between the beneficiary firm and the entity  
17 which seeks to replicate any financial re-  
18 turn with respect to such entity or interest  
19 in such entity.

20 “(D) DEBT OR OTHER ARRANGEMENTS

21 WITH FOREIGN ADVERSARY PARTIES.—

22 “(i) IN GENERAL.—An entity is de-  
23 scribed in this subparagraph if, as a result  
24 of any prohibited obligation or arrange-  
25 ment—

1           “(I) the actions, management, or  
2           operations of such entity are subject  
3           to the direct or indirect influence of 1  
4           or more entities described in subpara-  
5           graph (B) or (C), or

6           “(II) such entity provides a sub-  
7           stantial benefit to 1 or more entities  
8           described in subparagraph (B) or (C).

9           “(ii) PROHIBITED OBLIGATION OR AR-  
10          RANGEMENT.—For purposes of this sub-  
11          paragraph, the term ‘prohibited obligation  
12          or arrangement’ means any—

13                 “(I) debt,

14                 “(II) lease or sublease arrange-  
15                 ment,

16                 “(III) management or operating  
17                 arrangement,

18                 “(IV) contract manufacturing ar-  
19                 rangement,

20                 “(V) license or sublicense agree-  
21                 ment, or

22                 “(VI) financial derivative.

23           “(iii) EXCEPTION.—For purposes of  
24           clause (i)(II), the purchase of equipment  
25           or manufacturing inputs in an arm’s-

1 length transaction shall not, in and of  
2 itself, be deemed to provide a substantial  
3 benefit.

4 “(E) OTHER DEFINITIONS.—For purposes  
5 of this paragraph—

6 “(i) CONTROL.—The term ‘control’  
7 has the meaning given in section 800.208  
8 of title 31, Code of Federal Regulations  
9 (as in effect on the date of enactment of  
10 the Protecting American Advanced Manu-  
11 facturing Act).

12 “(ii) FOREIGN ADVERSARY.—The  
13 term ‘foreign adversary’ has the meaning  
14 given the term ‘covered nation’ in section  
15 4872(d)(2) of title 10, United States Code.

16 “(3) ADMINISTRATION.—The Secretary may  
17 issue such guidance as is necessary to carry out the  
18 purposes of this subsection, including establishment  
19 of rules for—

20 “(A) implementation of paragraph  
21 (2)(C)(i) for determination of whether the per-  
22 centage requirements with respect to out-  
23 standing equity interests have been satisfied in  
24 the case of an entity for which the stock of such  
25 entity is traded on an established securities

1 market in the United States or any foreign  
2 country, and

3 “(B) preventing entities from evading, cir-  
4 cumventing, or abusing the application of the  
5 requirements under this subsection.”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to taxable years beginning after  
8 the date of enactment of this Act.

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