

## Calendar No. 320

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 1979****[Report No. 107-140]**

To provide energy tax incentives.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2002

Mr. BAUCUS, from the Committee on Finance, reported the following original  
bill; which was read twice and placed on the calendar**A BILL**

To provide energy tax incentives.

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; ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
 5       “Energy Tax Incentives Act of 2002”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
 7       wise expressly provided, whenever in this Act an amend-  
 8       ment or repeal is expressed in terms of an amendment  
 9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for  
 4 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—EXTENSION AND MODIFICATION OF RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

Sec. 101. 5-year extension of credit for producing electricity from wind and  
poultry waste.

Sec. 102. Credit for electricity produced from biomass.

Sec. 103. Credit for electricity produced from swine and bovine waste nutrients,  
geothermal energy, and solar energy.

Sec. 104. Treatment of persons not able to use entire credit.

#### TITLE II—ALTERNATIVE VEHICLES AND FUELS INCENTIVES

Sec. 201. Alternative motor vehicle credit.

Sec. 202. Modification of credit for qualified electric vehicles.

Sec. 203. Extension of deduction for certain refueling property.

Sec. 204. Credit for installation of alternative fueling stations.

Sec. 205. Credit for retail sale of alternative fuels as motor vehicle fuel.

Sec. 206. Small ethanol producer credit.

Sec. 207. All alcohol fuels taxes transferred to Highway Trust Fund.

Sec. 208. Increased flexibility in alcohol fuels tax credit.

Sec. 209. Incentives for biodiesel.

#### TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

Sec. 301. Credit for construction of new energy efficient home.

Sec. 302. Credit for energy efficient appliances.

Sec. 303. Credit for residential energy efficient property.

Sec. 304. Credit for business installation of qualified fuel cells.

Sec. 305. Energy efficient commercial buildings deduction.

Sec. 306. Allowance of deduction for qualified new or retrofitted energy man-  
agement devices.

Sec. 307. Three-year applicable recovery period for depreciation of qualified en-  
ergy management devices.

Sec. 308. Energy credit for combined heat and power system property.

Sec. 309. Credit for energy efficiency improvements to existing homes.

#### TITLE IV—CLEAN COAL INCENTIVES

##### Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-based Electricity Generation Facilities

Sec. 401. Credit for production from a qualifying clean coal technology unit.

##### Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

- Sec. 411. Credit for investment in qualifying advanced clean coal technology.
- Sec. 412. Credit for production from a qualifying advanced clean coal technology unit.

#### Subtitle C—Treatment of Persons Not Able To Use Entire Credit

- Sec. 421. Treatment of persons not able to use entire credit.

### TITLE V—OIL AND GAS PROVISIONS

- Sec. 501. Oil and gas from marginal wells.
- Sec. 502. Natural gas gathering lines treated as 7-year property.
- Sec. 503. Repeal of requirement of certain approved terminals to offer dyed diesel fuel and kerosene for nontaxable purposes.
- Sec. 504. Expensing of capital costs incurred in complying with environmental protection agency sulfur regulations.
- Sec. 505. Environmental tax credit.
- Sec. 506. Determination of small refiner exception to oil depletion deduction.
- Sec. 507. Marginal production income limit extension.
- Sec. 508. Amortization of geological and geophysical expenditures.
- Sec. 509. Amortization of delay rental payments.
- Sec. 510. Study of coal bed methane.
- Sec. 511. Extension and modification of credit for producing fuel from a non-conventional source.
- Sec. 512. Natural gas distribution lines treated as 15-year property.

### TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

- Sec. 601. Ongoing study and reports regarding tax issues resulting from future restructuring decisions.
- Sec. 602. Modifications to special rules for nuclear decommissioning costs.
- Sec. 603. Treatment of certain income of cooperatives.

### TITLE VII—ADDITIONAL PROVISIONS

- Sec. 701. Extension of accelerated depreciation and wage credit benefits on Indian reservations.
- Sec. 702. Study of effectiveness of certain provisions by GAO.

1 **TITLE I—EXTENSION AND MODI-**  
 2 **FICATION OF RENEWABLE**  
 3 **ELECTRICITY PRODUCTION**  
 4 **TAX CREDIT**

5 **SEC. 101. 5-YEAR EXTENSION OF CREDIT FOR PRODUCING**  
 6 **ELECTRICITY FROM WIND AND POULTRY**  
 7 **WASTE.**

8 (a) IN GENERAL.—Subparagraphs (A) and (C) of  
 9 section 45(c)(3) (relating to qualified facility) are each  
 10 amended by striking “January 1, 2002” and inserting  
 11 “January 1, 2007”.

12 (b) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to electricity sold after the date  
 14 of the enactment of this Act, in taxable years ending after  
 15 such date.

16 **SEC. 102. CREDIT FOR ELECTRICITY PRODUCED FROM BIO-**  
 17 **MASS.**

18 (a) EXTENSION AND MODIFICATION OF PLACED-IN-  
 19 SERVICE RULES.—Paragraph (3) of section 45(c) is  
 20 amended—

21 (1) by striking subparagraph (B) and inserting  
 22 the following new subparagraph:

23 “(B) CLOSED-LOOP BIOMASS FACILITY.—

24 “(i) IN GENERAL.—In the case of a  
 25 facility using closed-loop biomass to

1 produce electricity, the term ‘qualified fa-  
2 cility’ means any facility—

3 “(I) owned by the taxpayer which  
4 is originally placed in service after De-  
5 cember 31, 1992, and before January  
6 1, 2007, or

7 “(II) owned by the taxpayer  
8 which is originally placed in service  
9 before January 1, 1993, and modified  
10 to use closed-loop biomass to co-fire  
11 with coal before January 1, 2007.

12 “(ii) SPECIAL RULES.—In the case of  
13 a qualified facility described in clause  
14 (i)(II)—

15 “(I) the 10-year period referred  
16 to in subsection (a) shall be treated as  
17 beginning no earlier than the date of  
18 the enactment of this subclause, and

19 “(II) the owner of such facility  
20 may transfer the credit allowable  
21 under subsection (a) to the lessee op-  
22 erator of such facility subject to the  
23 regulations prescribed under sub-  
24 section (d)(6)((B)(ii).”, and

(2) by adding at the end the following new subparagraph:

“(D) BIOMASS FACILITY.—

“(i) IN GENERAL.—In the case of a facility using biomass (other than closed-loop biomass) to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service before January 1, 2005.

“(ii) SPECIAL RULE FOR POSTEFFECTIVE DATE FACILITIES.—In the case of any facility described in clause (i) which is placed in service after the date of the enactment of this clause, the 3-year period beginning on the date the facility is originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(iii) SPECIAL RULES FOR PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in clause (i) which is placed in service before the date of the enactment of this clause—

1 “(I) subsection (a)(1) shall be  
 2 applied by substituting ‘1.0 cents’ for  
 3 ‘1.5 cents’, and

4 “(II) the 3-year period beginning  
 5 after December 31, 2002, shall be  
 6 substituted for the 10-year period in  
 7 subsection (a)(2)(A)(ii).

8 “(iv) CREDIT ELIGIBILITY.—In the  
 9 case of any facility described in clause (i),  
 10 the owner of such facility may transfer the  
 11 credit allowable under subsection (a) to the  
 12 lessee operator of such facility subject to  
 13 the regulations prescribed under subsection  
 14 (d)(6)((B)(ii).”.

15 (b) DEFINITION OF BIOMASS.—

16 (1) IN GENERAL.—Section 45(c)(1) (defining  
 17 qualified energy resources) is amended—

18 (A) by striking “and” at the end of sub-  
 19 paragraph (B),

20 (B) by striking the period at the end of  
 21 subparagraph (C) and inserting “, and”, and

22 (C) by adding at the end the following new  
 23 subparagraph:

24 “(D) biomass (other than closed-loop bio-  
 25 mass).”.

1           (2) BIOMASS DEFINED.—Section 45(c) (relating  
2           to definitions) is amended by adding at the end the  
3           following new paragraph:

4           “(5) BIOMASS.—The term ‘biomass’ means any  
5           solid, nonhazardous, cellulosic waste material which  
6           is segregated from other waste materials and which  
7           is derived from—

8                   “(A) any of the following forest-related re-  
9                   sources: mill residues, precommercial thinnings,  
10                  slash, and brush, but not including old-growth  
11                  timber (other than old-growth timber which has  
12                  been permitted or contracted for removal by  
13                  any appropriate Federal authority through the  
14                  National Environmental Policy Act or by any  
15                  appropriate State authority),

16                  “(B) solid wood waste materials, including  
17                  waste pallets, crates, dunnage, manufacturing  
18                  and construction wood wastes (other than pres-  
19                  sure-treated, chemically-treated, or painted  
20                  wood wastes), and landscape or right-of-way  
21                  tree trimmings, but not including municipal  
22                  solid waste (garbage), gas derived from the bio-  
23                  degradation of solid waste, or paper that is  
24                  commonly recycled, or



1           “(C) agriculture sources, including orchard  
2           tree crops, vineyard, grain, legumes, sugar, and  
3           other crop by-products or residues.”.

4           (c) COORDINATION WITH SECTION 29.—Section  
5 45(c) (relating to definitions) is amended by adding at the  
6 end the following new paragraph:

7           “(6) COORDINATION WITH SECTION 29.—The  
8           term ‘qualified facility’ shall not include any facility  
9           the production from which is taken into account in  
10          determining any credit under section 29 for the tax-  
11          able year or any prior taxable year.”.

12          (d) CLERICAL AMENDMENTS.—

13           (1) The heading for subsection (c) of section 45  
14          is amended by inserting “AND SPECIAL RULES”  
15          after “DEFINITIONS”.

16           (2) The heading for subsection (d) of section 45  
17          is amended by inserting “ADDITIONAL” before  
18          “DEFINITIONS”.

19          (e) EFFECTIVE DATES.—

20           (1) IN GENERAL.—Except as provided in para-  
21          graph (2), the amendments made by this section  
22          shall apply to electricity sold after the date of the  
23          enactment of this Act.

24           (2) CERTAIN BIOMASS FACILITIES.—With re-  
25          spect to any facility described in section

1       45(c)(3)(D)(i) of the Internal Revenue Code of  
 2       1986, as added by this section, which is placed in  
 3       service before the date of the enactment of this Act,  
 4       the amendments made by this section shall apply to  
 5       electricity sold after December 31, 2002.

6   **SEC. 103. CREDIT FOR ELECTRICITY PRODUCED FROM**  
 7                   **SWINE AND BOVINE WASTE NUTRIENTS, GEO-**  
 8                   **THERMAL ENERGY, AND SOLAR ENERGY.**

9       (a) EXPANSION OF QUALIFIED ENERGY RE-  
 10      SOURCES.—

11           (1) IN GENERAL.—Section 45(c)(1) (defining  
 12      qualified energy resources), as amended by this Act,  
 13      is amended by striking “and” at the end of subpara-  
 14      graph (C), by striking the period at the end of sub-  
 15      paragraph (D) and inserting a comma, and by add-  
 16      ing at the end the following new subparagraphs:

17                   “(E) swine and bovine waste nutrients,

18                   “(F) geothermal energy, and

19                   “(G) solar energy.”.

20           (2) DEFINITIONS.—Section 45(c) (relating to  
 21      definitions and special rules), as amended by this  
 22      Act, is amended by redesignating paragraph (6) as  
 23      paragraph (8) and by inserting after paragraph (5)  
 24      the following new paragraphs:

1 “(6) SWINE AND BOVINE WASTE NUTRIENTS.—

2 The term ‘swine and bovine waste nutrients’ means  
3 swine and bovine manure and litter, including bed-  
4 ding material for the disposition of manure.

5 “(7) GEOTHERMAL ENERGY.—The term ‘geo-  
6 thermal energy’ means energy derived from a geo-  
7 thermal deposit (within the meaning of section  
8 613(e)(2)).”.

9 (b) EXTENSION AND MODIFICATION OF PLACED-IN-  
10 SERVICE RULES.—Section 45(c)(3) (relating to qualified  
11 facility), as amended by this Act, is amended by adding  
12 at the end the following new subparagraphs:

13 “(E) SWINE AND BOVINE WASTE NUTRI-  
14 ENTS FACILITY.—In the case of a facility using  
15 swine and bovine waste nutrients to produce  
16 electricity, the term ‘qualified facility’ means  
17 any facility owned by the taxpayer which is  
18 originally placed in service after the date of the  
19 enactment of this subparagraph and before  
20 January 1, 2007.

21 “(F) GEOTHERMAL OR SOLAR ENERGY FA-  
22 CILITY.—

23 “(i) IN GENERAL.—In the case of a  
24 facility using geothermal or solar energy to  
25 produce electricity, the term ‘qualified fa-

cility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this clause and before January 1, 2007.

“(ii) SPECIAL RULE.—In the case of any facility described in clause (i), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

**SEC. 104. TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.**

(a) IN GENERAL.—Paragraph (6) of section 45(d) (relating to additional definitions and special rules), as amended by this Act, is amended to read as follows:

“(6) TREATMENT OF PERSONS NOT ABLE TO USE ENTIRE CREDIT.—

“(A) ALLOWANCE OF CREDIT.—

“(i) IN GENERAL.—Except as otherwise provided in this subsection—

1 “(I) any credit allowable under  
2 subsection (a) with respect to a quali-  
3 fied facility owned by a person de-  
4 scribed in clause (ii) may be trans-  
5 ferred or used as provided in this  
6 paragraph, and

7 “(II) the determination as to  
8 whether the credit is allowable shall  
9 be made without regard to the tax-ex-  
10 empt status of the person.

11 “(ii) PERSONS DESCRIBED.—A person  
12 is described in this clause if the person  
13 is—

14 “(I) an organization described in  
15 section 501(c)(12)(C) and exempt  
16 from tax under section 501(a),

17 “(II) an organization described  
18 in section 1381(a)(2)(C),

19 “(III) a public utility (as defined  
20 in section 136(c)(2)(B)),

21 “(IV) any State or political sub-  
22 division thereof, the District of Co-  
23 lumbia, any possession of the United  
24 States, or any agency or instrumen-  
25 tality of any of the foregoing, or

1                   “(V) any Indian tribal govern-  
2                   ment (within the meaning of section  
3                   7871) or any agency or instrumen-  
4                   tality thereof.

5                   “(B) TRANSFER OF CREDIT.—

6                   “(i) IN GENERAL.—A person de-  
7                   scribed in subparagraph (A)(ii) may trans-  
8                   fer any credit to which subparagraph  
9                   (A)(i) applies through an assignment to  
10                  any other person not described in subpara-  
11                  graph (A)(ii). Such transfer may be re-  
12                  voked only with the consent of the Sec-  
13                  retary.

14                  “(ii) REGULATIONS.—The Secretary  
15                  shall prescribe such regulations as nec-  
16                  essary to ensure that any credit described  
17                  in clause (i) is claimed once and not reas-  
18                  signed by such other person.

19                  “(iii) TRANSFER PROCEEDS TREATED  
20                  AS ARISING FROM ESSENTIAL GOVERN-  
21                  MENT FUNCTION.—Any proceeds derived  
22                  by a person described in subclause (III),  
23                  (IV), or (V) of subparagraph (A)(ii) from  
24                  the transfer of any credit under clause (i)

1           shall be treated as arising from the exer-  
2           cise of an essential government function.

3           “(C) USE OF CREDIT AS AN OFFSET.—  
4       Notwithstanding any other provision of law, in  
5       the case of a person described in subclause (I),  
6       (II), or (V) of subparagraph (A)(ii), any credit  
7       to which subparagraph (A)(i) applies may be  
8       applied by such person, to the extent provided  
9       by the Secretary of Agriculture, as a prepay-  
10      ment of any loan, debt, or other obligation the  
11      entity has incurred under subchapter I of chap-  
12      ter 31 of title 7 of the Rural Electrification Act  
13      of 1936 (7 U.S.C. 901 et seq.), as in effect on  
14      the date of the enactment of the Energy Tax  
15      Incentives Act of 2002.

16           “(D) CREDIT NOT INCOME.—Any transfer  
17      under subparagraph (B) or use under subpara-  
18      graph (C) of any credit to which subparagraph  
19      (A)(i) applies shall not be treated as income for  
20      purposes of section 501(c)(12).

21           “(E) TREATMENT OF UNRELATED PER-  
22      SONS.—For purposes of subsection (a)(2)(B),  
23      sales among and between persons described in  
24      subparagraph (A)(ii) shall be treated as sales  
25      between unrelated parties.”.

1 (b) CREDITS NOT REDUCED BY TAX-EXEMPT  
 2 BONDS OR CERTAIN OTHER SUBSIDIES.—Section  
 3 45(b)(3) (relating to credit reduced for grants, tax-exempt  
 4 bonds, subsidized energy financing, and other credits) is  
 5 amended—

6 (1) by striking clause (ii),

7 (2) by redesignating clauses (iii) and (iv) as  
 8 clauses (ii) and (iii),

9 (3) by inserting “(other than any loan, debt, or  
 10 other obligation incurred under subchapter I of  
 11 chapter 31 of title 7 of the Rural Electrification Act  
 12 of 1936 (7 U.S.C. 901 et seq.), as in effect on the  
 13 date of the enactment of the Energy Tax Incentives  
 14 Act of 2002)” after “project” in clause (ii) (as so  
 15 redesignated), and

16 (4) by striking “TAX-EXEMPT BONDS,” in the  
 17 heading and inserting “CERTAIN”.

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to electricity sold after the date  
 20 of the enactment of this Act, in taxable years ending after  
 21 such date.



1 **TITLE II—ALTERNATIVE MOTOR**  
 2 **VEHICLES AND FUELS INCEN-**  
 3 **TIVES**

4 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT.**

5 (a) IN GENERAL.—Subpart B of part IV of sub-  
 6 chapter A of chapter 1 (relating to foreign tax credit, etc.)  
 7 is amended by adding at the end the following new section:

8 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
 10 lowed as a credit against the tax imposed by this chapter  
 11 for the taxable year an amount equal to the sum of—

12 “(1) the new qualified fuel cell motor vehicle  
 13 credit determined under subsection (b),

14 “(2) the new qualified hybrid motor vehicle  
 15 credit determined under subsection (c), and

16 “(3) the new qualified alternative fuel motor ve-  
 17 hicle credit determined under subsection (d).

18 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE  
 19 CREDIT.—

20 “(1) IN GENERAL.—For purposes of subsection  
 21 (a), the new qualified fuel cell motor vehicle credit  
 22 determined under this subsection with respect to a  
 23 new qualified fuel cell motor vehicle placed in service  
 24 by the taxpayer during the taxable year is—

1           “(A) \$4,000, if such vehicle has a gross ve-  
 2           hicle weight rating of not more than 8,500  
 3           pounds,

4           “(B) \$10,000, if such vehicle has a gross  
 5           vehicle weight rating of more than 8,500  
 6           pounds but not more than 14,000 pounds,

7           “(C) \$20,000, if such vehicle has a gross  
 8           vehicle weight rating of more than 14,000  
 9           pounds but not more than 26,000 pounds, and

10          “(D) \$40,000, if such vehicle has a gross  
 11          vehicle weight rating of more than 26,000  
 12          pounds.

13          “(2) INCREASE FOR FUEL EFFICIENCY.—

14               “(A) IN GENERAL.—The amount deter-  
 15               mined under paragraph (1)(A) with respect to  
 16               a new qualified fuel cell motor vehicle which is  
 17               a passenger automobile or light truck shall be  
 18               increased by—

19                       “(i) \$1,000, if such vehicle achieves at  
 20                       least 150 percent but less than 175 per-  
 21                       cent of the 2000 model year city fuel econ-  
 22                       omy,

23                       “(ii) \$1,500, if such vehicle achieves  
 24                       at least 175 percent but less than 200 per-

1 cent of the 2000 model year city fuel econ-  
2 omy,

3 “(iii) \$2,000, if such vehicle achieves  
4 at least 200 percent but less than 225 per-  
5 cent of the 2000 model year city fuel econ-  
6 omy,

7 “(iv) \$2,500, if such vehicle achieves  
8 at least 225 percent but less than 250 per-  
9 cent of the 2000 model year city fuel econ-  
10 omy,

11 “(v) \$3,000, if such vehicle achieves  
12 at least 250 percent but less than 275 per-  
13 cent of the 2000 model year city fuel econ-  
14 omy,

15 “(vi) \$3,500, if such vehicle achieves  
16 at least 275 percent but less than 300 per-  
17 cent of the 2000 model year city fuel econ-  
18 omy, and

19 “(vii) \$4,000, if such vehicle achieves  
20 at least 300 percent of the 2000 model  
21 year city fuel economy.

22 “(B) 2000 MODEL YEAR CITY FUEL ECON-  
23 OMY.—For purposes of subparagraph (A), the  
24 2000 model year city fuel economy with respect

1 to a vehicle shall be determined in accordance  
 2 with the following tables:

3 “(i) In the case of a passenger auto-  
 4 mobile:

<b>“If vehicle inertia weight class is:</b>	<b>The 2000 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	43.7 mpg
2,000 lbs .....	38.3 mpg
2,250 lbs .....	34.1 mpg
2,500 lbs .....	30.7 mpg
2,750 lbs .....	27.9 mpg
3,000 lbs .....	25.6 mpg
3,500 lbs .....	22.0 mpg
4,000 lbs .....	19.3 mpg
4,500 lbs .....	17.2 mpg
5,000 lbs .....	15.5 mpg
5,500 lbs .....	14.1 mpg
6,000 lbs .....	12.9 mpg
6,500 lbs .....	11.9 mpg
7,000 to 8,500 lbs .....	11.1 mpg.

5 “(ii) In the case of a light truck:

<b>“If vehicle inertia weight class is:</b>	<b>The 2000 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	37.6 mpg
2,000 lbs .....	33.7 mpg
2,250 lbs .....	30.6 mpg
2,500 lbs .....	28.0 mpg
2,750 lbs .....	25.9 mpg
3,000 lbs .....	24.1 mpg
3,500 lbs .....	21.3 mpg
4,000 lbs .....	19.0 mpg
4,500 lbs .....	17.3 mpg
5,000 lbs .....	15.8 mpg
5,500 lbs .....	14.6 mpg
6,000 lbs .....	13.6 mpg
6,500 lbs .....	12.8 mpg
7,000 to 8,500 lbs .....	12.0 mpg.

6 “(C) VEHICLE INERTIA WEIGHT CLASS.—

7 For purposes of subparagraph (B), the term  
 8 ‘vehicle inertia weight class’ has the same  
 9 meaning as when defined in regulations pre-  
 10 scribed by the Administrator of the Environ-

1           mental Protection Agency for purposes of the  
2           administration of title II of the Clean Air Act  
3           (42 U.S.C. 7521 et seq.).

4           “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-  
5           CLE.—For purposes of this subsection, the term  
6           ‘new qualified fuel cell motor vehicle’ means a motor  
7           vehicle—

8                   “(A) which is propelled by power derived  
9                   from one or more cells which convert chemical  
10                  energy directly into electricity by combining ox-  
11                  ygen with hydrogen fuel which is stored on  
12                  board the vehicle in any form and may or may  
13                  not require reformation prior to use,

14                  “(B) which, in the case of a passenger  
15                  automobile or light truck—

16                   “(i) for 2002 and later model vehicles,  
17                   has received a certificate of conformity  
18                   under the Clean Air Act and meets or ex-  
19                   ceeds the equivalent qualifying California  
20                   low emission vehicle standard under sec-  
21                   tion 243(e)(2) of the Clean Air Act for  
22                   that make and model year, and

23                   “(ii) for 2004 and later model vehi-  
24                   cles, has received a certificate that such ve-  
25                   hicle meets or exceeds the Bin 5 Tier II

1 emission level established in regulations  
 2 prescribed by the Administrator of the En-  
 3 vironmental Protection Agency under sec-  
 4 tion 202(i) of the Clean Air Act for that  
 5 make and model year vehicle,

6 “(C) the original use of which commences  
 7 with the taxpayer,

8 “(D) which is acquired for use or lease by  
 9 the taxpayer and not for resale, and

10 “(E) which is made by a manufacturer.

11 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE  
 12 CREDIT.—

13 “(1) IN GENERAL.—For purposes of subsection  
 14 (a), the new qualified hybrid motor vehicle credit de-  
 15 termined under this subsection with respect to a new  
 16 qualified hybrid motor vehicle placed in service by  
 17 the taxpayer during the taxable year is the credit  
 18 amount determined under paragraph (2).

19 “(2) CREDIT AMOUNT.—

20 “(A) IN GENERAL.—The credit amount de-  
 21 termined under this paragraph shall be deter-  
 22 mined in accordance with the following tables:

23 “(i) In the case of a new qualified hy-  
 24 brid motor vehicle which is a passenger  
 25 automobile or light truck and which pro-

1 provides the following percentage of the max-  
 2 imum available power:

**“If percentage of the maximum                      The credit amount is:  
 available power is:**

At least 5 percent but less than 10 percent .....	\$250
At least 10 percent but less than 20 percent .....	\$500
At least 20 percent but less than 30 percent .....	\$750
At least 30 percent .....	\$1,000.

3 “(ii) In the case of a new qualified hy-  
 4 brid motor vehicle which is a heavy duty  
 5 hybrid motor vehicle and which provides  
 6 the following percentage of the maximum  
 7 available power:

8 “(I) If such vehicle has a gross  
 9 vehicle weight rating of not more than  
 10 14,000 pounds:

**“If percentage of the maximum                      The credit amount is:  
 available power is:**

At least 20 percent but less than 30 percent .....	\$1,000
At least 30 percent but less than 40 percent .....	\$1,750
At least 40 percent but less than 50 percent .....	\$2,000
At least 50 percent but less than 60 percent .....	\$2,250
At least 60 percent .....	\$2,500.

11 “(II) If such vehicle has a gross  
 12 vehicle weight rating of more than  
 13 14,000 but not more than 26,000  
 14 pounds:

**“If percentage of the maximum                      The credit amount is:  
 available power is:**

At least 20 percent but less than 30 percent .....	\$4,000
At least 30 percent but less than 40 percent .....	\$4,500
At least 40 percent but less than 50 percent .....	\$5,000
At least 50 percent but less than 60 percent .....	\$5,500
At least 60 percent .....	\$6,000.

1                   “(III) If such vehicle has a gross  
 2                   vehicle weight rating of more than  
 3                   26,000 pounds:

<b>“If percentage of the maximum available power is:</b>	<b>The credit amount is:</b>
At least 20 percent but less than 30 percent .....	\$6,000
At least 30 percent but less than 40 percent .....	\$7,000
At least 40 percent but less than 50 percent .....	\$8,000
At least 50 percent but less than 60 percent .....	\$9,000
At least 60 percent .....	\$10,000.

4                   “(B) INCREASE FOR FUEL EFFICIENCY.—

5                   “(i) AMOUNT.—The amount deter-  
 6                   mined under subparagraph (A)(i) with re-  
 7                   spect to a new qualified hybrid motor vehi-  
 8                   cle which is a passenger automobile or  
 9                   light truck shall be increased by—

10                   “(I) \$500, if such vehicle  
 11                   achieves at least 125 percent but less  
 12                   than 150 percent of the 2000 model  
 13                   year city fuel economy,

14                   “(II) \$1,000, if such vehicle  
 15                   achieves at least 150 percent but less  
 16                   than 175 percent of the 2000 model  
 17                   year city fuel economy,

18                   “(III) \$1,500, if such vehicle  
 19                   achieves at least 175 percent but less  
 20                   than 200 percent of the 2000 model  
 21                   year city fuel economy,



1                   “(IV) \$2,000, if such vehicle  
2 achieves at least 200 percent but less  
3 than 225 percent of the 2000 model  
4 year city fuel economy,

5                   “(V) \$2,500, if such vehicle  
6 achieves at least 225 percent but less  
7 than 250 percent of the 2000 model  
8 year city fuel economy, and

9                   “(VI) \$3,000, if such vehicle  
10 achieves at least 250 percent of the  
11 2000 model year city fuel economy.

12                   “(ii) 2000 MODEL YEAR CITY FUEL  
13 ECONOMY.—For purposes of clause (i), the  
14 2000 model year city fuel economy with re-  
15 spect to a vehicle shall be determined using  
16 the tables provided in subsection (b)(2)(B)  
17 with respect to such vehicle.

18                   “(C) INCREASE FOR ACCELERATED EMIS-  
19 SIONS PERFORMANCE.—The amount deter-  
20 mined under subparagraph (A)(ii) with respect  
21 to an applicable heavy duty hybrid motor vehi-  
22 cle shall be increased by the increased credit  
23 amount determined in accordance with the fol-  
24 lowing tables:

1 “(i) In the case of a vehicle which has  
 2 a gross vehicle weight rating of not more  
 3 than 14,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2002 .....	\$3,500
2003 .....	\$3,000
2004 .....	\$2,500
2005 .....	\$2,000
2006 .....	\$1,500.

4 “(ii) In the case of a vehicle which  
 5 has a gross vehicle weight rating of more  
 6 than 14,000 pounds but not more than  
 7 26,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2002 .....	\$9,000
2003 .....	\$7,750
2004 .....	\$6,500
2005 .....	\$5,250
2006 .....	\$4,000.

8 “(iii) In the case of a vehicle which  
 9 has a gross vehicle weight rating of more  
 10 than 26,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2002 .....	\$14,000
2003 .....	\$12,000
2004 .....	\$10,000
2005 .....	\$8,000
2006 .....	\$6,000.

11 “(D) DEFINITIONS.—

12 “(i) APPLICABLE HEAVY DUTY HY-  
 13 BRID MOTOR VEHICLE.—For purposes of  
 14 subparagraph (C), the term ‘applicable  
 15 heavy duty hybrid motor vehicle’ means a

1 heavy duty hybrid motor vehicle which is  
2 powered by an internal combustion or heat  
3 engine which is certified as meeting the  
4 emission standards set in the regulations  
5 prescribed by the Administrator of the En-  
6 vironmental Protection Agency for 2007  
7 and later model year diesel heavy duty en-  
8 gines, or for 2008 and later model year  
9 ottocycle heavy duty engines, as applicable.

10 “(ii) HEAVY DUTY HYBRID MOTOR VE-  
11 HICLE.—For purposes of this paragraph,  
12 the term ‘heavy duty hybrid motor vehicle’  
13 means a new qualified hybrid motor vehicle  
14 which has a gross vehicle weight rating of  
15 more than 10,000 pounds and draws pro-  
16 pulsion energy from both of the following  
17 onboard sources of stored energy:

18 “(I) An internal combustion or  
19 heat engine using consumable fuel  
20 which, for 2002 and later model vehi-  
21 cles, has received a certificate of con-  
22 formity under the Clean Air Act and  
23 meets or exceeds a level of not greater  
24 than 3.0 grams per brake horse-  
25 power-hour of oxides of nitrogen and

0.01 per brake horsepower-hour of particulate matter.

“(II) A rechargeable energy storage system.

“(iii) MAXIMUM AVAILABLE POWER.—

“(I) PASSENGER AUTOMOBILE OR LIGHT TRUCK.—For purposes of subparagraph (A)(i), the term ‘maximum available power’ means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

“(II) HEAVY DUTY HYBRID MOTOR VEHICLE.—For purposes of subparagraph (A)(ii), the term ‘maximum available power’ means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle’s total traction power. The term ‘total traction power’ means the

1                   sum of the peak power from the re-  
 2                   chargeable energy storage system and  
 3                   the heat engine peak power of the ve-  
 4                   hicle, except that if such storage sys-  
 5                   tem is the sole means by which the ve-  
 6                   hicle can be driven, the total traction  
 7                   power is the peak power of such stor-  
 8                   age system.

9                   “(3) NEW QUALIFIED HYBRID MOTOR VEHI-  
 10                  CLE.—For purposes of this subsection, the term  
 11                  ‘new qualified hybrid motor vehicle’ means a motor  
 12                  vehicle—

13                   “(A) which draws propulsion energy from  
 14                   onboard sources of stored energy which are  
 15                   both—

16                   “(i) an internal combustion or heat  
 17                   engine using combustible fuel, and

18                   “(ii) a rechargeable energy storage  
 19                   system,

20                   “(B) which, in the case of a passenger  
 21                   automobile or light truck—

22                   “(i) for 2002 and later model vehicles,  
 23                   has received a certificate of conformity  
 24                   under the Clean Air Act and meets or ex-  
 25                   ceeds the equivalent qualifying California

1 low emission vehicle standard under sec-  
 2 tion 243(e)(2) of the Clean Air Act for  
 3 that make and model year, and

4 “(ii) for 2004 and later model vehi-  
 5 cles, has received a certificate that such ve-  
 6 hicle meets or exceeds the Bin 5 Tier II  
 7 emission level established in regulations  
 8 prescribed by the Administrator of the En-  
 9 vironmental Protection Agency under sec-  
 10 tion 202(i) of the Clean Air Act for that  
 11 make and model year vehicle,

12 “(C) the original use of which commences  
 13 with the taxpayer,

14 “(D) which is acquired for use or lease by  
 15 the taxpayer and not for resale, and

16 “(E) which is made by a manufacturer.

17 “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR  
 18 VEHICLE CREDIT.—

19 “(1) ALLOWANCE OF CREDIT.—Except as pro-  
 20 vided in paragraph (5), the credit determined under  
 21 this subsection is an amount equal to the applicable  
 22 percentage of the incremental cost of any new quali-  
 23 fied alternative fuel motor vehicle placed in service  
 24 by the taxpayer during the taxable year.

1           “(2) APPLICABLE PERCENTAGE.—For purposes  
2           of paragraph (1), the applicable percentage with re-  
3           spect to any new qualified alternative fuel motor ve-  
4           hicle is—

5                   “(A) 40 percent, plus

6                   “(B) 30 percent, if such vehicle—

7                           “(i) has received a certificate of con-  
8                           formity under the Clean Air Act and meets  
9                           or exceeds the most stringent standard  
10                          available for certification under the Clean  
11                          Air Act for that make and model year vehi-  
12                          cle (other than a zero emission standard),  
13                          or

14                           “(ii) has received an order certifying  
15                           the vehicle as meeting the same require-  
16                           ments as vehicles which may be sold or  
17                           leased in California and meets or exceeds  
18                           the most stringent standard available for  
19                           certification under the State laws of Cali-  
20                           fornia (enacted in accordance with a waiv-  
21                           er granted under section 209(b) of the  
22                           Clean Air Act) for that make and model  
23                           year vehicle (other than a zero emission  
24                           standard).

1           “(3) INCREMENTAL COST.—For purposes of  
 2           this subsection, the incremental cost of any new  
 3           qualified alternative fuel motor vehicle is equal to  
 4           the amount of the excess of the manufacturer’s sug-  
 5           gested retail price for such vehicle over such price  
 6           for a gasoline or diesel fuel motor vehicle of the  
 7           same model, to the extent such amount does not  
 8           exceed—

9                   “(A) \$5,000, if such vehicle has a gross ve-  
 10                  hicle weight rating of not more than 8,500  
 11                  pounds,

12                  “(B) \$10,000, if such vehicle has a gross  
 13                  vehicle weight rating of more than 8,500  
 14                  pounds but not more than 14,000 pounds,

15                  “(C) \$25,000, if such vehicle has a gross  
 16                  vehicle weight rating of more than 14,000  
 17                  pounds but not more than 26,000 pounds, and

18                  “(D) \$40,000, if such vehicle has a gross  
 19                  vehicle weight rating of more than 26,000  
 20                  pounds.

21           “(4) QUALIFIED ALTERNATIVE FUEL MOTOR  
 22           VEHICLE DEFINED.—For purposes of this  
 23           subsection—



“(A) IN GENERAL.—The term ‘qualified alternative fuel motor vehicle’ means any motor vehicle—

“(i) which is only capable of operating on an alternative fuel,

“(ii) the original use of which commences with the taxpayer,

“(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

“(iv) which is made by a manufacturer.

“(B) ALTERNATIVE FUEL.—The term ‘alternative fuel’ means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

“(5) CREDIT FOR MIXED-FUEL VEHICLES.—

“(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

“(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which

would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

“(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

“(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘mixed-fuel vehicle’ means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

“(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

“(ii) either—

“(I) has received a certificate of conformity under the Clean Air Act, or

“(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets

1 or exceeds the low emission vehicle  
2 standard under section 88.105–94 of  
3 title 40, Code of Federal Regulations,  
4 for that make and model year vehicle,  
5 “(iii) the original use of which com-  
6 mences with the taxpayer,

7 “(iv) which is acquired by the tax-  
8 payer for use or lease, but not for resale,  
9 and

10 “(v) which is made by a manufac-  
11 turer.

12 “(C) 75/25 MIXED-FUEL VEHICLE.—For  
13 purposes of this subsection, the term ‘75/25  
14 mixed-fuel vehicle’ means a mixed-fuel vehicle  
15 which operates using at least 75 percent alter-  
16 native fuel and not more than 25 percent petro-  
17 leum-based fuel.

18 “(D) 90/10 MIXED-FUEL VEHICLE.—For  
19 purposes of this subsection, the term ‘90/10  
20 mixed-fuel vehicle’ means a mixed-fuel vehicle  
21 which operates using at least 90 percent alter-  
22 native fuel and not more than 10 percent petro-  
23 leum-based fuel.

1       “(e) APPLICATION WITH OTHER CREDITS.—The  
2 credit allowed under subsection (a) for any taxable year  
3 shall not exceed the excess (if any) of—

4               “(1) the regular tax for the taxable year re-  
5 duced by the sum of the credits allowable under sub-  
6 part A and sections 27, 29, and 30, over

7               “(2) the tentative minimum tax for the taxable  
8 year.

9       “(f) OTHER DEFINITIONS AND SPECIAL RULES.—  
10 For purposes of this section—

11               “(1) CONSUMABLE FUEL.—The term  
12 ‘consumable fuel’ means any solid, liquid, or gaseous  
13 matter which releases energy when consumed by an  
14 auxiliary power unit.

15               “(2) MOTOR VEHICLE.—The term ‘motor vehi-  
16 cle’ has the meaning given such term by section  
17 30(c)(2).

18               “(3) CITY FUEL ECONOMY.—The city fuel econ-  
19 omy with respect to any vehicle shall be measured in  
20 a manner which is substantially similar to the man-  
21 ner city fuel economy is measured in accordance  
22 with procedures under part 600 of subchapter Q of  
23 chapter I of title 40, Code of Federal Regulations,  
24 as in effect on the date of the enactment of this sec-  
25 tion.

1           “(4) OTHER TERMS.—The terms ‘automobile’,  
 2           ‘passenger automobile’, ‘light truck’, and ‘manufac-  
 3           turer’ have the meanings given such terms in regula-  
 4           tions prescribed by the Administrator of the Envi-  
 5           ronmental Protection Agency for purposes of the ad-  
 6           ministration of title II of the Clean Air Act (42  
 7           U.S.C. 7521 et seq.).

8           “(5) REDUCTION IN BASIS.—For purposes of  
 9           this subtitle, the basis of any property for which a  
 10          credit is allowable under subsection (a) shall be re-  
 11          duced by the amount of such credit so allowed (de-  
 12          termined without regard to subsection (e)).

13          “(6) NO DOUBLE BENEFIT.—The amount of  
 14          any deduction or other credit allowable under this  
 15          chapter—

16               “(A) for any incremental cost taken into  
 17               account in computing the amount of the credit  
 18               determined under subsection (d) shall be re-  
 19               duced by the amount of such credit attributable  
 20               to such cost, and

21               “(B) with respect to a vehicle described  
 22               under subsection (b) or (c), shall be reduced by  
 23               the amount of credit allowed under subsection  
 24               (a) for such vehicle for the taxable year.

1           “(7) PROPERTY USED BY TAX-EXEMPT ENTI-  
 2           TIES.—In the case of a credit amount which is al-  
 3           lowable with respect to a motor vehicle which is ac-  
 4           quired by an entity exempt from tax under this  
 5           chapter, the person which sells or leases such vehicle  
 6           to the entity shall be treated as the taxpayer with  
 7           respect to the vehicle for purposes of this section  
 8           and the credit shall be allowed to such person, but  
 9           only if the person clearly discloses to the entity at  
 10          the time of any sale or lease the specific amount of  
 11          any credit otherwise allowable to the entity under  
 12          this section.

13           “(8) RECAPTURE.—The Secretary shall, by reg-  
 14          ulations, provide for recapturing the benefit of any  
 15          credit allowable under subsection (a) with respect to  
 16          any property which ceases to be property eligible for  
 17          such credit (including recapture in the case of a  
 18          lease period of less than the economic life of a vehi-  
 19          cle).

20           “(9) PROPERTY USED OUTSIDE UNITED  
 21          STATES, ETC., NOT QUALIFIED.—No credit shall be  
 22          allowed under subsection (a) with respect to any  
 23          property referred to in section 50(b) or with respect  
 24          to the portion of the cost of any property taken into  
 25          account under section 179.

1           “(10) ELECTION TO NOT TAKE CREDIT.—No  
 2           credit shall be allowed under subsection (a) for any  
 3           vehicle if the taxpayer elects to not have this section  
 4           apply to such vehicle.

5           “(11) CARRYBACK AND CARRYFORWARD AL-  
 6           LOWED.—

7           “(A) IN GENERAL.—If the credit amount  
 8           allowable under subsection (a) for a taxable  
 9           year exceeds the amount of the limitation under  
 10          subsection (e) for such taxable year (in this  
 11          paragraph referred to as the ‘unused credit  
 12          year’), such excess shall be allowed as a credit  
 13          carryback for each of the 3 taxable years begin-  
 14          ning after September 30, 2002, which precede  
 15          the unused credit year and a credit  
 16          carryforward for each of the 20 taxable years  
 17          which succeed the unused credit year.

18          “(B) RULES.—Rules similar to the rules of  
 19          section 39 shall apply with respect to the credit  
 20          carryback and credit carryforward under sub-  
 21          paragraph (A).

22          “(12) INTERACTION WITH AIR QUALITY AND  
 23          MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-  
 24          erwise provided in this section, a motor vehicle shall

1 not be considered eligible for a credit under this sec-  
2 tion unless such vehicle is in compliance with—

3 “(A) the applicable provisions of the Clean  
4 Air Act for the applicable make and model year  
5 of the vehicle (or applicable air quality provi-  
6 sions of State law in the case of a State which  
7 has adopted such provision under a waiver  
8 under section 209(b) of the Clean Air Act), and

9 “(B) the motor vehicle safety provisions of  
10 sections 30101 through 30169 of title 49,  
11 United States Code.

12 “(g) REGULATIONS.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), the Secretary shall promulgate such regu-  
15 lations as necessary to carry out the provisions of  
16 this section.

17 “(2) COORDINATION IN PRESCRIPTION OF CER-  
18 TAIN REGULATIONS.—The Secretary of the Treas-  
19 ury, in coordination with the Secretary of Transpor-  
20 tation and the Administrator of the Environmental  
21 Protection Agency, shall prescribe such regulations  
22 as necessary to determine whether a motor vehicle  
23 meets the requirements to be eligible for a credit  
24 under this section.



1 “(h) TERMINATION.—This section shall not apply to  
2 any property purchased after—

3 “(1) in the case of a new qualified fuel cell  
4 motor vehicle (as described in subsection (b)), De-  
5 cember 31, 2011, and

6 “(2) in the case of any other property, Decem-  
7 ber 31, 2006.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 1016(a) is amended by striking  
10 “and” at the end of paragraph (27), by striking the  
11 period at the end of paragraph (28) and inserting “,  
12 and”, and by adding at the end the following new  
13 paragraph:

14 “(29) to the extent provided in section  
15 30B(f)(5).”.

16 (2) Section 55(c)(2) is amended by inserting  
17 “30B(e),” after “30(b)(3)”.

18 (3) Section 6501(m) is amended by inserting  
19 “30B(f)(10),” after “30(d)(4),”.

20 (4) The table of sections for subpart B of part  
21 IV of subchapter A of chapter 1 is amended by in-  
22 serting after the item relating to section 30A the fol-  
23 lowing new item:

“Sec. 30B. Alternative motor vehicle credit.”.

24 (e) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to property placed in service after

1 September 30, 2002, in taxable years ending after such  
2 date.

3 **SEC. 202. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**  
4 **TRIC VEHICLES.**

5 (a) AMOUNT OF CREDIT.—

6 (1) IN GENERAL.—Section 30(a) (relating to al-  
7 lowance of credit) is amended by striking “10 per-  
8 cent of”.

9 (2) LIMITATION OF CREDIT ACCORDING TO  
10 TYPE OF VEHICLE.—Section 30(b) (relating to limi-  
11 tations) is amended—

12 (A) by striking paragraphs (1) and (2) and  
13 inserting the following new paragraph:

14 “(1) LIMITATION ACCORDING TO TYPE OF VE-  
15 HICLE.—The amount of the credit allowed under  
16 subsection (a) for any vehicle shall not exceed the  
17 greatest of the following amounts applicable to such  
18 vehicle:

19 “(A) In the case of a vehicle which con-  
20 forms to the Motor Vehicle Safety Standard  
21 500 prescribed by the Secretary of Transpor-  
22 tation, as in effect on the date of the enactment  
23 of the Energy Tax Incentives Act of 2002, the  
24 lesser of—

1 “(i) 10 percent of the manufacturer’s  
2 suggested retail price of the vehicle, or

3 “(ii) \$3,500.

4 “(B) In the case of a vehicle not described  
5 in subparagraph (A) with a gross vehicle weight  
6 rating not exceeding 8,500 pounds—

7 “(i) \$3,500, or

8 “(ii) \$6,000, if such vehicle is—

9 “(I) capable of a driving range of  
10 at least 100 miles on a single charge  
11 of the vehicle’s rechargeable batteries  
12 as measured pursuant to the urban  
13 dynamometer schedules under appen-  
14 dix I to part 86 of title 40, Code of  
15 Federal Regulations, or

16 “(II) capable of a payload capac-  
17 ity of at least 1,000 pounds.

18 “(C) In the case of a vehicle with a gross  
19 vehicle weight rating exceeding 8,500 but not  
20 exceeding 14,000 pounds, \$10,000.

21 “(D) In the case of a vehicle with a gross  
22 vehicle weight rating exceeding 14,000 but not  
23 exceeding 26,000 pounds, \$20,000.

1           “(E) In the case of a vehicle with a gross  
2           vehicle weight rating exceeding 26,000 pounds,  
3           \$40,000.”, and

4           (B) by redesignating paragraph (3) as  
5           paragraph (2).

6           (3) CONFORMING AMENDMENTS.—

7           (A) Section 53(d)(1)(B)(iii) is amended by  
8           striking “section 30(b)(3)(B)” and inserting  
9           “section 30(b)(2)(B)”.

10          (3) Section 55(c)(2), as amended by this Act, is  
11          amended by striking “30(b)(3)” and inserting  
12          “30(b)(2)”.

13          (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

14          (1) IN GENERAL.—Section 30(c)(1)(A) (defin-  
15          ing qualified electric vehicle) is amended to read as  
16          follows:

17                 “(A) which is—

18                         “(i) operated solely by use of a bat-  
19                         tery or battery pack, or

20                         “(ii) powered primarily through the  
21                         use of an electric battery or battery pack  
22                         using a flywheel or capacitor which stores  
23                         energy produced by an electric motor  
24                         through regenerative braking to assist in  
25                         vehicle operation,”.

1           (2) LEASED VEHICLES.—Section 30(c)(1)(C) is  
2       amended by inserting “or lease” after “use”.

3           (3) CONFORMING AMENDMENTS.—

4           (A) Subsections (a), (b)(2), and (c) of sec-  
5       tion 30 are each amended by inserting “bat-  
6       tery” after “qualified” each place it appears.

7           (B) The heading of subsection (c) of sec-  
8       tion 30 is amended by inserting “BATTERY”  
9       after “QUALIFIED”.

10          (C) The heading of section 30 is amended  
11       by inserting “**BATTERY**” after “**QUALIFIED**”.

12          (D) The item relating to section 30 in the  
13       table of sections for subpart B of part IV of  
14       subchapter A of chapter 1 is amended by in-  
15       serting “battery” after “qualified”.

16          (E) Section 179A(c)(3) is amended by in-  
17       serting “battery” before “electric”.

18          (F) The heading of paragraph (3) of sec-  
19       tion 179A(c) is amended by inserting “BAT-  
20       TERY” before “ELECTRIC”.

21       (c) ADDITIONAL SPECIAL RULES.—Section 30(d)  
22       (relating to special rules) is amended by adding at the end  
23       the following new paragraphs:

24           “(5) NO DOUBLE BENEFIT.—The amount of  
25       any deduction or other credit allowable under this

chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

“(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

“(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

“(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(3) for such taxable year (in this paragraph referred to as the ‘unused credit year’), such excess shall be allowed as a credit carryback for each of the 3 taxable years beginning after September 30, 2002, which precede

1           the unused credit year and a credit  
2           carryforward for each of the 20 taxable years  
3           which succeed the unused credit year.

4           “(B) RULES.—Rules similar to the rules of  
5           section 39 shall apply with respect to the credit  
6           carryback and credit carryforward under sub-  
7           paragraph (A).”.

8           (d) EXTENSION.—Section 30(e) (relating to termi-  
9           nation) is amended by striking “2004” and inserting  
10          “2006”.

11          (e) EFFECTIVE DATE.—The amendments made by  
12          this section shall apply to property placed in service after  
13          September 30, 2002, in taxable years ending after such  
14          date.

15   **SEC. 203. EXTENSION OF DEDUCTION FOR CERTAIN RE-**  
16                           **FUELING PROPERTY.**

17          (a) IN GENERAL.—Section 179A(f) (relating to ter-  
18          mination) is amended by striking “2004” and inserting  
19          “2006”.

20          (b)       EXTENSION       OF       PHASEOUT.—Section  
21          179A(b)(1)(B) (relating to phaseout) is amended—

22                  (1) by striking “calendar year 2002” in clause  
23                  (i) and inserting “calendar years 2003 and 2004”,  
24                  (2) by striking “2003” in clause (ii) and insert-  
25          ing “2005”, and

1           (3) by striking “2004” in clause (iii) and in-  
2           serting “2006”.

3           (c) CONFORMING AMENDMENT.—Section 179A(c)  
4 (relating to qualified clean-fuel vehicle property defined)  
5 is amended by striking paragraph (3).

6           (d) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to property placed in service after  
8 December 31, 2002, in taxable years ending after such  
9 date.

10 **SEC. 204. CREDIT FOR INSTALLATION OF ALTERNATIVE**  
11 **FUELING STATIONS.**

12           (a) IN GENERAL.—Subpart B of part IV of sub-  
13 chapter A of chapter 1 (relating to foreign tax credit, etc.),  
14 as amended by this Act, is amended by adding at the end  
15 the following new section:

16 **“SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY**  
17 **CREDIT.**

18           “(a) CREDIT ALLOWED.—There shall be allowed as  
19 a credit against the tax imposed by this chapter for the  
20 taxable year an amount equal to 50 percent of the amount  
21 paid or incurred by the taxpayer during the taxable year  
22 for the installation of qualified clean-fuel vehicle refueling  
23 property.

24           “(b) LIMITATION.—The credit allowed under sub-  
25 section (a)—



1           “(1) with respect to any retail clean-fuel vehicle  
2       refueling property, shall not exceed \$30,000, and

3           “(2) with respect to any residential clean-fuel  
4       vehicle refueling property, shall not exceed \$1,000.

5       “(c) YEAR CREDIT ALLOWED.—The credit allowed  
6       under subsection (a) shall be allowed in the taxable year  
7       in which the qualified clean-fuel vehicle refueling property  
8       is placed in service by the taxpayer.

9       “(d) DEFINITIONS.—For purposes of this section—

10           “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-  
11       FUELING PROPERTY.—The term ‘qualified clean-fuel  
12       vehicle refueling property’ has the same meaning  
13       given such term by section 179A(d).

14           “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-  
15       FUELING PROPERTY.—The term ‘residential clean-  
16       fuel vehicle refueling property’ means qualified  
17       clean-fuel vehicle refueling property which is in-  
18       stalled on property which is used as the principal  
19       residence (within the meaning of section 121) of the  
20       taxpayer.

21           “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING  
22       PROPERTY.—The term ‘retail clean-fuel vehicle re-  
23       fueling property’ means qualified clean-fuel vehicle  
24       refueling property which is installed on property

1 (other than property described in paragraph (2))  
 2 used in a trade or business of the taxpayer.

3 “(e) APPLICATION WITH OTHER CREDITS.—The  
 4 credit allowed under subsection (a) for any taxable year  
 5 shall not exceed the excess (if any) of—

6 “(1) the regular tax for the taxable year re-  
 7 duced by the sum of the credits allowable under sub-  
 8 part A and sections 27, 29, 30, and 30B, over

9 “(2) the tentative minimum tax for the taxable  
 10 year.

11 “(f) BASIS REDUCTION.—For purposes of this title,  
 12 the basis of any property shall be reduced by the portion  
 13 of the cost of such property taken into account under sub-  
 14 section (a).

15 “(g) NO DOUBLE BENEFIT.—No deduction shall be  
 16 allowed under section 179A with respect to any property  
 17 with respect to which a credit is allowed under subsection  
 18 (a).

19 “(h) REFUELING PROPERTY INSTALLED FOR TAX-  
 20 EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-  
 21 hicle refueling property installed on property owned or  
 22 used by an entity exempt from tax under this chapter, the  
 23 person which installs such refueling property for the entity  
 24 shall be treated as the taxpayer with respect to the refuel-  
 25 ing property for purposes of this section (and such refuel-

1 ing property shall be treated as retail clean-fuel vehicle  
 2 refueling property) and the credit shall be allowed to such  
 3 person, but only if the person clearly discloses to the entity  
 4 in any installation contract the specific amount of the  
 5 credit allowable under this section.

6 “(i) CARRYFORWARD ALLOWED.—

7 “(1) IN GENERAL.—If the credit amount allow-  
 8 able under subsection (a) for a taxable year exceeds  
 9 the amount of the limitation under subsection (b)  
 10 for such taxable year (referred to as the ‘unused  
 11 credit year’ in this subsection), such excess shall be  
 12 allowed as a credit carryforward for each of the 20  
 13 taxable years following the unused credit year.

14 “(2) RULES.—Rules similar to the rules of sec-  
 15 tion 39 shall apply with respect to the credit  
 16 carryforward under paragraph (1).

17 “(j) SPECIAL RULES.—Rules similar to the rules of  
 18 paragraphs (4) and (5) of section 179A(e) shall apply.

19 “(k) REGULATIONS.—The Secretary shall prescribe  
 20 such regulations as necessary to carry out the provisions  
 21 of this section.

22 “(l) TERMINATION.—This section shall not apply to  
 23 any property placed in service after December 31, 2006.”.

24 (b) CONFORMING AMENDMENTS.—

(1) Section 1016(a), as amended by this Act, is amended by striking “and” at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting “, and”, and by adding at the end the following new paragraph:

6 “(30) to the extent provided in section  
7 30C(f).”.

8           (2) Section 55(c)(2), as amended by this Act, is  
9           amended by inserting “30C(e),” after “30B(e)”.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

“Sec. 30C. Clean-fuel vehicle refueling property credit.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

18 SEC. 205. CREDIT FOR RETAIL SALE OF ALTERNATIVE  
19 FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

1 **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**  
 2 **FUELS AS MOTOR VEHICLE FUEL.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
 4 the alternative fuel retail sales credit for any taxable year  
 5 is the applicable amount for each gasoline gallon equiva-  
 6 lent of alternative fuel sold at retail by the taxpayer during  
 7 such year as a fuel to propel any qualified motor vehicle.

8 “(b) DEFINITIONS.—For purposes of this section—

9 “(1) APPLICABLE AMOUNT.—The term ‘applica-  
 10 ble amount’ means the amount determined in ac-  
 11 cordance with the following table:

**“In the case of any taxable year The applicable amount is—  
 ending in—**

2002 and 2003 .....	30 cents
2004 .....	40 cents
2005 and 2006 .....	50 cents.

12 “(2) ALTERNATIVE FUEL.—The term ‘alter-  
 13 native fuel’ means compressed natural gas, liquefied  
 14 natural gas, liquefied petroleum gas, hydrogen, and  
 15 any liquid at least 85 percent of the volume of which  
 16 consists of methanol or ethanol.

17 “(3) GASOLINE GALLON EQUIVALENT.—The  
 18 term ‘gasoline gallon equivalent’ means, with respect  
 19 to any alternative fuel, the amount (determined by  
 20 the Secretary) of such fuel having a Btu content of  
 21 114,000.

22 “(4) QUALIFIED MOTOR VEHICLE.—The term  
 23 ‘qualified motor vehicle’ means any motor vehicle (as

1 defined in section 30(c)(2)) which meets any appli-  
2 cable Federal or State emissions standards with re-  
3 spect to each fuel by which such vehicle is designed  
4 to be propelled.

5 “(5) SOLD AT RETAIL.—

6 “(A) IN GENERAL.—The term ‘sold at re-  
7 tail’ means the sale, for a purpose other than  
8 resale, after manufacture, production, or impor-  
9 tation.

10 “(B) USE TREATED AS SALE.—If any per-  
11 son uses alternative fuel (including any use  
12 after importation) as a fuel to propel any quali-  
13 fied alternative fuel motor vehicle (as defined in  
14 section 30B(d)(4)) before such fuel is sold at  
15 retail, then such use shall be treated in the  
16 same manner as if such fuel were sold at retail  
17 as a fuel to propel such a vehicle by such per-  
18 son.

19 “(c) NO DOUBLE BENEFIT.—The amount of any de-  
20 duction or other credit allowable under this chapter for  
21 any fuel taken into account in computing the amount of  
22 the credit determined under subsection (a) shall be re-  
23 duced by the amount of such credit attributable to such  
24 fuel.

1       “(d) PASS-THRU IN THE CASE OF ESTATES AND  
 2 TRUSTS.—Under regulations prescribed by the Secretary,  
 3 rules similar to the rules of subsection (d) of section 52  
 4 shall apply.

5       “(e) TERMINATION.—This section shall not apply to  
 6 any fuel sold at retail after December 31, 2006.”.

7       (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 8 tion 38(b) (relating to current year business credit) is  
 9 amended by striking “plus” at the end of paragraph (14),  
 10 by striking the period at the end of paragraph (15) and  
 11 inserting “, plus”, and by adding at the end the following  
 12 new paragraph:

13               “(16) the alternative fuel retail sales credit de-  
 14 termined under section 40A(a).”.

15       (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
 16 transitional rules) is amended by adding at the end the  
 17 following new paragraph:

18               “(11) NO CARRYBACK OF SECTION 40A CREDIT  
 19 BEFORE EFFECTIVE DATE.—No portion of the un-  
 20 used business credit for any taxable year which is  
 21 attributable to the alternative fuel retail sales credit  
 22 determined under section 40A(a) may be carried  
 23 back to a taxable year ending before January 1,  
 24 2002.”.

1 (d) CLERICAL AMENDMENT.—The table of sections  
 2 for subpart D of part IV of subchapter A of chapter 1  
 3 is amended by inserting after the item relating to section  
 4 40 the following new item:

“Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

5 (e) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to fuel sold at retail after Sep-  
 7 tember 30, 2002, in taxable years ending after such date.

8 **SEC. 206. SMALL ETHANOL PRODUCER CREDIT.**

9 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
 10 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to  
 11 alcohol used as fuel) is amended by adding at the end the  
 12 following new paragraph:

13 “(6) ALLOCATION OF SMALL ETHANOL PRO-  
 14 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

15 “(A) ELECTION TO ALLOCATE.—

16 “(i) IN GENERAL.—In the case of a  
 17 cooperative organization described in sec-  
 18 tion 1381(a), any portion of the credit de-  
 19 termined under subsection (a)(3) for the  
 20 taxable year may, at the election of the or-  
 21 ganization, be apportioned pro rata among  
 22 patrons of the organization on the basis of  
 23 the quantity or value of business done with  
 24 or for such patrons for the taxable year.



1                   “(ii) FORM AND EFFECT OF ELEC-  
 2                   TION.—An election under clause (i) for any  
 3                   taxable year shall be made on a timely  
 4                   filed return for such year. Such election,  
 5                   once made, shall be irrevocable for such  
 6                   taxable year.

7                   “(B) TREATMENT OF ORGANIZATIONS AND  
 8                   PATRONS.—The amount of the credit appor-  
 9                   tioned to patrons under subparagraph (A)—

10                   “(i) shall not be included in the  
 11                   amount determined under subsection (a)  
 12                   with respect to the organization for the  
 13                   taxable year,

14                   “(ii) shall be included in the amount  
 15                   determined under subsection (a) for the  
 16                   taxable year of each patron for which the  
 17                   patronage dividends for the taxable year  
 18                   described in subparagraph (A) are included  
 19                   in gross income, and

20                   “(iii) shall be included in gross income  
 21                   of such patrons for the taxable year in the  
 22                   manner and to the extent provided in sec-  
 23                   tion 87.

24                   “(C) SPECIAL RULES FOR DECREASE IN  
 25                   CREDITS FOR TAXABLE YEAR.—If the amount

of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

“(i) such reduction, over

“(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this subpart or subpart A, B, E, or G.”.

(b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.—

(1) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking “30,000,000” each place it appears and inserting “60,000,000”.

(2) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section

1       469(d)(2)(A) is amended by striking “subpart D”  
 2       and inserting “subpart D, other than section  
 3       40(a)(3),”.

4           (3) ALLOWING CREDIT AGAINST MINIMUM  
 5       TAX.—

6           (A) IN GENERAL.—Subsection (c) of sec-  
 7       tion 38 (relating to limitation based on amount  
 8       of tax) is amended by redesignating paragraph  
 9       (3) as paragraph (4) and by inserting after  
 10      paragraph (2) the following new paragraph:

11       “(3) SPECIAL RULES FOR SMALL ETHANOL  
 12      PRODUCER CREDIT.—

13       “(A) IN GENERAL.—In the case of the  
 14      small ethanol producer credit—

15       “(i) this section and section 39 shall  
 16      be applied separately with respect to the  
 17      credit, and

18       “(ii) in applying paragraph (1) to the  
 19      credit—

20       “(I) subparagraphs (A) and (B)  
 21      thereof shall not apply, and

22       “(II) the limitation under para-  
 23      graph (1) (as modified by subclause  
 24      (I)) shall be reduced by the credit al-  
 25      lowed under subsection (a) for the

1 taxable year (other than the small  
2 ethanol producer credit).

3 “(B) SMALL ETHANOL PRODUCER CRED-  
4 IT.—For purposes of this subsection, the term  
5 ‘small ethanol producer credit’ means the credit  
6 allowable under subsection (a) by reason of sec-  
7 tion 40(a)(3).”.

8 (B) CONFORMING AMENDMENT.—Sub-  
9 clause (II) of section 38(c)(2)(A)(ii) is amended  
10 by striking “(other” and all that follows  
11 through “credit)” and inserting “(other than  
12 the empowerment zone employment credit or  
13 the small ethanol producer credit)”.

14 (4) SMALL ETHANOL PRODUCER CREDIT NOT  
15 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-  
16 tion 87 (relating to income inclusion of alcohol fuel  
17 credit) is amended to read as follows:

18 **“SEC. 87. ALCOHOL FUEL CREDIT.**

19 “Gross income includes an amount equal to the sum  
20 of—

21 “(1) the amount of the alcohol mixture credit  
22 determined with respect to the taxpayer for the tax-  
23 able year under section 40(a)(1), and

1           “(2) the alcohol credit determined with respect  
2           to the taxpayer for the taxable year under section  
3           40(a)(2).”.

4           (c) CONFORMING AMENDMENT.—Section 1388 (re-  
5           lating to definitions and special rules for cooperative orga-  
6           nizations) is amended by adding at the end the following  
7           new subsection:

8           “(k) CROSS REFERENCE.—For provisions relating to  
9           the apportionment of the alcohol fuels credit between coop-  
10          erative organizations and their patrons, see section  
11          40(g)(6).”.

12          (d) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to taxable years beginning after  
14          the date of the enactment of this Act.

15   **SEC. 207. ALL ALCOHOL FUELS TAXES TRANSFERRED TO**  
16                           **HIGHWAY TRUST FUND.**

17          (a) IN GENERAL.—Section 9503(b)(4) (relating to  
18          certain taxes not transferred to Highway Trust Fund) is  
19          amended—

20                 (1) by adding “or” at the end of subparagraph  
21                 (C),

22                 (2) by striking the comma at the end of sub-  
23                 paragraph (D)(iii) and inserting a period, and

24                 (3) by striking subparagraphs (E) and (F).

1 (b) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxes imposed after September  
 3 30, 2003.

4 **SEC. 208. INCREASED FLEXIBILITY IN ALCOHOL FUELS TAX**  
 5 **CREDIT.**

6 (a) ALCOHOL FUELS CREDIT MAY BE TRANS-  
 7 FERRED.—

8 (1) IN GENERAL.—Section 40 (relating to alco-  
 9 hol used as fuel) is amended by adding at the end  
 10 the following new subsection:

11 “(i) CREDIT MAY BE TRANSFERRED.—

12 “(1) IN GENERAL.—A taxpayer may transfer  
 13 any credit allowable under paragraph (1) or (2) of  
 14 subsection (a) with respect to alcohol used in the  
 15 production of ethyl tertiary butyl ether through an  
 16 assignment to a qualified assignee. Such transfer  
 17 may be revoked only with the consent of the Sec-  
 18 retary.

19 “(2) QUALIFIED ASSIGNEE.—For purposes of  
 20 this subsection, the term ‘qualified assignee’ means  
 21 any person who is—

22 “(A) liable for taxes imposed under section  
 23 4081,

24 “(B) required to register under section  
 25 4101, and

1           “(C) a member of the same controlled  
 2           group of corporations (within the meaning of  
 3           section 52(a)) as the taxpayer described in  
 4           paragraph (1).

5           “(3) REGULATIONS.—The Secretary shall pre-  
 6           scribe such regulations as necessary to insure that  
 7           any credit described in paragraph (1) is claimed  
 8           once and not reassigned by a qualified assignee.”.

9           (2) PASSIVE LOSS RULES INAPPLICABLE TO AS-  
 10          SIGNEE.—Section 469(d)(2)(A)(i) is amended to  
 11          read as follows:

12                   “(i) subpart D (other than section 40  
 13                   through the application of subsection (i)  
 14                   thereof) of part IV of subchapter A, or”.

15          (b) ALCOHOL FUELS CREDIT MAY BE TAKEN  
 16          AGAINST MOTOR FUELS TAX LIABILITY.—

17           (1) IN GENERAL.—Subpart C of part III of  
 18          subchapter A of chapter 32 (relating to special pro-  
 19          visions applicable to petroleum products) is amended  
 20          by adding at the end the following new section:

21       **“SEC. 4104. CREDIT AGAINST MOTOR FUELS TAXES.**

22           “(a) ELECTION TO USE CREDIT AGAINST MOTOR  
 23          FUELS TAXES.—There is hereby allowed as a credit  
 24          against the taxes imposed by section 4081, any credit al-  
 25          lowed under paragraph (1) or (2) of section 40(a) with

1 respect to alcohol used in the production of ethyl tertiary  
 2 butyl ether to the extent—

3 “(1) such credit is not claimed by the taxpayer  
 4 or the qualified assignee under section 40(i) as a  
 5 credit under section 40, and

6 “(2) the taxpayer or qualified assignee elects to  
 7 claim such credit under this section.

8 “(b) ELECTION IRREVOCABLE.—Any election under  
 9 subsection (a) shall be irrevocable.

10 “(c) REQUIRED STATEMENT.—Any return claiming  
 11 a credit pursuant to an election under this section shall  
 12 be accompanied by a statement that the credit was not,  
 13 and will not, be claimed on an income tax return.

14 “(d) REGULATIONS.—The Secretary shall prescribe  
 15 such regulations as necessary to avoid the claiming of dou-  
 16 ble benefits and to prescribe the taxable periods with re-  
 17 spect to which the credit may be claimed.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-  
 19 tions for subpart C of part III of subchapter A of  
 20 chapter 32 is amended by adding at the end the fol-  
 21 lowing new item:

“Sec. 4104. Credit against motor fuels taxes.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall take effect on and after the date of the  
 24 enactment of this Act.



1 **SEC. 209. INCENTIVES FOR BIODIESEL.**

2 (a) CREDIT FOR BIODIESEL USED AS A FUEL.—

3 (1) IN GENERAL.—Subpart D of part IV of  
 4 subchapter A of chapter 1 (relating to business re-  
 5 lated credits), as amended by this Act, is amended  
 6 by inserting after section 40A the following new sec-  
 7 tion:

8 **“SEC. 40B. BIODIESEL USED AS FUEL.**

9 “(a) GENERAL RULE.—For purposes of section 38,  
 10 the biodiesel fuels credit determined under this section for  
 11 the taxable year is an amount equal to the biodiesel mix-  
 12 ture credit.

13 “(b) DEFINITION OF BIODIESEL MIXTURE CRED-  
 14 IT.—For purposes of this section—

15 “(1) BIODIESEL MIXTURE CREDIT.—

16 “(A) IN GENERAL.—The biodiesel mixture  
 17 credit of any taxpayer for any taxable year is  
 18 the sum of the products of the biodiesel mixture  
 19 rate for each qualified biodiesel mixture and the  
 20 number of gallons of such mixture of the tax-  
 21 payer for the taxable year.

22 “(B) BIODIESEL MIXTURE RATE.—For  
 23 purposes of subparagraph (A), the biodiesel  
 24 mixture rate for each qualified biodiesel mixture  
 25 shall be 1 cent for each whole percentage point

1 (not exceeding 20 percentage points) of bio-  
 2 diesel in such mixture.

3 “(2) QUALIFIED BIODIESEL MIXTURE.—

4 “(A) IN GENERAL.—The term ‘qualified  
 5 biodiesel mixture’ means a mixture of diesel  
 6 and biodiesel which—

7 “(i) is sold by the taxpayer producing  
 8 such mixture to any person for use as a  
 9 fuel, or

10 “(ii) is used as a fuel by the taxpayer  
 11 producing such mixture.

12 “(B) SALE OR USE MUST BE IN TRADE OR  
 13 BUSINESS, ETC.—Biodiesel used in the produc-  
 14 tion of a qualified biodiesel mixture shall be  
 15 taken into account—

16 “(i) only if the sale or use described  
 17 in subparagraph (A) is in a trade or busi-  
 18 ness of the taxpayer, and

19 “(ii) for the taxable year in which  
 20 such sale or use occurs.

21 “(C) CASUAL OFF-FARM PRODUCTION NOT  
 22 ELIGIBLE.—No credit shall be allowed under  
 23 this section with respect to any casual off-farm  
 24 production of a qualified biodiesel mixture.

1       “(c) COORDINATION WITH EXEMPTION FROM EX-  
 2 CISE TAX.—The amount of the credit determined under  
 3 this section with respect to any biodiesel shall, under regu-  
 4 lations prescribed by the Secretary, be properly reduced  
 5 to take into account any benefit provided with respect to  
 6 such biodiesel solely by reason of the application of section  
 7 4041(n) or section 4081(f).

8       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
 9 poses of this section—

10       “(1) BIODIESEL DEFINED.—

11               “(A) IN GENERAL.—The term ‘biodiesel’  
 12 means the monoalkyl esters of long chain fatty  
 13 acids derived from virgin vegetable oils for use  
 14 in compressional-ignition (diesel) engines. Such  
 15 term shall include esters derived from vegetable  
 16 oils from corn, soybeans, sunflower seeds, cot-  
 17 tonseeds, canola, crambe, rapeseeds, safflowers,  
 18 flaxseeds, rice bran, and mustard seeds.

19               “(B) REGISTRATION REQUIREMENTS.—  
 20 Such term shall only include a biodiesel which  
 21 meets—

22                       “(i) the registration requirements for  
 23 fuels and fuel additives established by the  
 24 Environmental Protection Agency under

1 section 211 of the Clean Air Act (42  
2 U.S.C. 7545), and

3 “(ii) the requirements of the Amer-  
4 ican Society of Testing and Materials  
5 D6751.

6 “(2) BIODIESEL MIXTURE NOT USED AS A  
7 FUEL, ETC.—

8 “(A) IMPOSITION OF TAX.—If—

9 “(i) any credit was determined under  
10 this section with respect to biodiesel used  
11 in the production of any qualified biodiesel  
12 mixture, and

13 “(ii) any person—

14 “(I) separates the biodiesel from  
15 the mixture, or

16 “(II) without separation, uses the  
17 mixture other than as a fuel,

18 then there is hereby imposed on such per-  
19 son a tax equal to the product of the bio-  
20 diesel mixture rate applicable under sub-  
21 section (b)(1)(B) and the number of gal-  
22 lons of the mixture.

23 “(B) APPLICABLE LAWS.—All provisions of  
24 law, including penalties, shall, insofar as appli-  
25 cable and not inconsistent with this section,

1           apply in respect of any tax imposed under sub-  
 2           paragraph (A) as if such tax were imposed by  
 3           section 4081 and not by this chapter.

4           “(3) PASS-THRU IN THE CASE OF ESTATES AND  
 5           TRUSTS.—Under regulations prescribed by the Sec-  
 6           retary, rules similar to the rules of subsection (d) of  
 7           section 52 shall apply.

8           “(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT  
 9           NOT APPLY.—

10           “(1) IN GENERAL.—A taxpayer may elect to  
 11           have this section not apply for any taxable year.

12           “(2) TIME FOR MAKING ELECTION.—An elec-  
 13           tion under paragraph (1) for any taxable year may  
 14           be made (or revoked) at any time before the expira-  
 15           tion of the 3-year period beginning on the last date  
 16           prescribed by law for filing the return for such tax-  
 17           able year (determined without regard to extensions).

18           “(3) MANNER OF MAKING ELECTION.—An elec-  
 19           tion under paragraph (1) (or revocation thereof)  
 20           shall be made in such manner as the Secretary may  
 21           by regulations prescribe.”.

22           “(f) TERMINATION.—This section shall not apply to  
 23           any fuel sold after December 31, 2005.”.

24           “(2) CREDIT TREATED AS PART OF GENERAL  
 25           BUSINESS CREDIT.—Section 38(b), as amended by

1       this Act, is amended by striking “plus” at the end  
 2       of paragraph (15), by striking the period at the end  
 3       of paragraph (16) and inserting “, plus”, and by  
 4       adding at the end the following new paragraph:

5               “(17) the biodiesel fuels credit determined  
 6       under section 40B.”.

7               (3) CONFORMING AMENDMENTS.—

8               (A) Section 39(d), as amended by this Act,  
 9       is amended by adding at the end the following  
 10      new paragraph:

11              “(12) NO CARRYBACK OF BIODIESEL FUELS  
 12      CREDIT BEFORE JANUARY 1, 2003.—No portion of  
 13      the unused business credit for any taxable year  
 14      which is attributable to the biodiesel fuels credit de-  
 15      termined under section 40B may be carried back to  
 16      a taxable year beginning before January 1, 2003.”.

17              (B) Section 196(c) is amended by striking  
 18      “and” at the end of paragraph (9), by striking  
 19      the period at the end of paragraph (10), and by  
 20      adding at the end the following new paragraph:

21              “(11) the biodiesel fuels credit determined  
 22      under section 40B.”.

23              (C) Section 6501(m), as amended by this  
 24      Act, is amended by inserting “40B(e),” after  
 25      “40(f),”.

1 (D) The table of sections for subpart D of  
 2 part IV of subchapter A of chapter 1, as  
 3 amended by this Act, is amended by adding  
 4 after the item relating to section 40A the fol-  
 5 lowing new item:

“Sec. 40B. Biodiesel used as fuel.”.

6 (4) EFFECTIVE DATE.—The amendments made  
 7 by this subsection shall apply to taxable years begin-  
 8 ning after December 31, 2002.

9 (b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON  
 10 BIODIESEL MIXTURES.—

11 (1) IN GENERAL.—Section 4081 (relating to  
 12 manufacturers tax on petroleum products) is amend-  
 13 ed by adding at the end the following new sub-  
 14 section:

15 “(f) BIODIESEL MIXTURES.—Under regulations pre-  
 16 scribed by the Secretary—

17 “(1) IN GENERAL.—In the case of the removal  
 18 or entry of a qualified biodiesel mixture, the rate of  
 19 tax under subsection (a) shall be the otherwise appli-  
 20 cable rate reduced by the biodiesel mixture rate (if  
 21 any) applicable to the mixture.

22 “(2) TAX PRIOR TO MIXING.—

23 “(A) IN GENERAL.—In the case of the re-  
 24 moval or entry of diesel fuel for use in pro-  
 25 ducing at the time of such removal or entry a

qualified biodiesel mixture, the rate of tax under subsection (a) shall be the otherwise applicable rate, reduced by the amount determined under subparagraph (B).

“(B) APPLICABLE REDUCTION.—For purposes of subparagraph (A), the amount determined under this subparagraph is an amount equal to the biodiesel mixture rate for the qualified biodiesel mixture to be produced from the diesel fuel, divided by a percentage equal to 100 percent minus the percentage of biodiesel which will be in the mixture.

“(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 is amended by adding at the end the following new subsection:

“(n) BIODIESEL MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section



1 40B(b)(2)), the rates under paragraphs (1) and (2) of  
 2 subsection (a) shall be the otherwise applicable rates, re-  
 3 duced by any applicable biodiesel mixture rate (as defined  
 4 in section 40B(b)(1)(B)).”.

5 (B) Section 6427 is amended by redesign-  
 6 nating subsection (p) as subsection (q) and by  
 7 inserting after subsection (o) the following new  
 8 subsection:

9 “(p) BIODIESEL MIXTURES.—Except as provided in  
 10 subsection (k), if any diesel fuel on which tax was imposed  
 11 by section 4081 at a rate not determined under section  
 12 4081(f) is used by any person in producing a qualified  
 13 biodiesel mixture (as defined in section 40B(b)(2)) which  
 14 is sold or used in such person’s trade or business, the Sec-  
 15 retary shall pay (without interest) to such person an  
 16 amount equal to the per gallon applicable biodiesel mix-  
 17 ture rate (as defined in section 40B(b)(1)(B)) with respect  
 18 to such fuel.”.

19 (3) EFFECTIVE DATE.—The amendments made  
 20 by this subsection shall apply to any fuel sold after  
 21 December 31, 2002, and before January 1, 2006.

22 (c) HIGHWAY TRUST FUND HELD HARMLESS.—  
 23 There are hereby transferred (from time to time) from the  
 24 funds of the Commodity Credit Corporation amounts de-  
 25 termined by the Secretary of the Treasury to be equivalent

1 to the reductions that would occur (but for this sub-  
 2 section) in the receipts of the Highway Trust Fund by  
 3 reason of the amendments made by this section.

4 **TITLE III—CONSERVATION AND**  
 5 **ENERGY EFFICIENCY PROVI-**  
 6 **SIONS**

7 **SEC. 301. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**  
 8 **FICIENT HOME.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-  
 10 chapter A of chapter 1 (relating to business related cred-  
 11 its), as amended by this Act, is amended by adding at  
 12 the end the following new section:

13 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

14 “(a) IN GENERAL.—For purposes of section 38, in  
 15 the case of an eligible contractor, the credit determined  
 16 under this section for the taxable year is an amount equal  
 17 to the aggregate adjusted bases of all energy efficient  
 18 property installed in a qualifying new home during con-  
 19 struction of such home.

20 “(b) LIMITATIONS.—

21 “(1) MAXIMUM CREDIT.—

22 “(A) IN GENERAL.—The credit allowed by  
 23 this section with respect to a qualifying new  
 24 home shall not exceed—

1 “(i) in the case of a 30-percent home,  
2 \$1,250, and

3 “(ii) in the case of a 50-percent home,  
4 \$2,000.

5 “(B) 30- OR 50-PERCENT HOME.—For pur-  
6 poses of subparagraph (A)—

7 “(i) 30-PERCENT HOME.—The term  
8 ‘30-percent home’ means a qualifying new  
9 home which is certified to have a projected  
10 level of annual heating and cooling energy  
11 consumption, measured in terms of aver-  
12 age annual energy cost to the homeowner,  
13 which is at least 30 percent less than the  
14 annual level of heating and cooling energy  
15 consumption of a reference qualifying new  
16 home constructed in accordance with the  
17 standards of chapter 4 of the 2000 Inter-  
18 national Energy Conservation Code.

19 “(ii) 50-PERCENT HOME.—The term  
20 ‘50-percent home’ means a qualifying new  
21 home which is certified to have a projected  
22 level of annual heating and cooling energy  
23 consumption, measured in terms of aver-  
24 age annual energy cost to the homeowner,  
25 which is at least 50 percent less than such

1           annual level of heating and cooling energy  
2           consumption.

3           “(B) PRIOR CREDIT AMOUNTS ON SAME  
4           HOME TAKEN INTO ACCOUNT.—If a credit was  
5           allowed under subsection (a) with respect to a  
6           qualifying new home in 1 or more prior taxable  
7           years, the amount of the credit otherwise allow-  
8           able for the taxable year with respect to that  
9           home shall not exceed the amount under clause  
10          (i) or (ii) of subparagraph (A) (as the case may  
11          be), reduced by the sum of the credits allowed  
12          under subsection (a) with respect to the home  
13          for all prior taxable years.

14          “(2) COORDINATION WITH REHABILITATION  
15          AND ENERGY CREDITS.—For purposes of this  
16          section—

17                 “(A) the basis of any property referred to  
18                 in subsection (a) shall be reduced by that por-  
19                 tion of the basis of any property which is attrib-  
20                 utable to the rehabilitation credit (as deter-  
21                 mined under section 47(a)) or to the energy  
22                 percentage of energy property (as determined  
23                 under section 48(a)), and

1           “(B) expenditures taken into account  
2           under either section 47 or 48(a) shall not be  
3           taken into account under this section.

4           “(c) DEFINITIONS.—For purposes of this section—

5           “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-  
6           ble contractor’ means the person who constructed  
7           the qualifying new home, or in the case of a manu-  
8           factured home which conforms to Federal Manufac-  
9           tured Home Construction and Safety Standards (24  
10          C.F.R. 3280), the manufactured home producer of  
11          such home.

12          “(2) ENERGY EFFICIENT PROPERTY.—The  
13          term ‘energy efficient property’ means any energy  
14          efficient building envelope component, and any en-  
15          ergy efficient heating or cooling equipment which  
16          can, individually or in combination with other com-  
17          ponents, meet the requirements of this section.

18          “(3) QUALIFYING NEW HOME.—The term  
19          ‘qualifying new home’ means a dwelling—

20                 “(A) located in the United States,

21                 “(B) the construction of which is substan-  
22                 tially completed after the date of the enactment  
23                 of this section, and

1           “(C) the first use of which after construc-  
 2           tion is as a principal residence (within the  
 3           meaning of section 121).

4           “(4) CONSTRUCTION.—The term ‘construction’  
 5           includes reconstruction and rehabilitation.

6           “(5) BUILDING ENVELOPE COMPONENT.—The  
 7           term ‘building envelope component’ means—

8               “(A) any insulation material or system  
 9               which is specifically and primarily designed to  
 10              reduce the heat loss or gain of a qualifying new  
 11              home when installed in or on such home, and

12               “(B) exterior windows (including skylights)  
 13              and doors.

14           “(6) MANUFACTURED HOME INCLUDED.—The  
 15           term ‘qualifying new home’ includes a manufactured  
 16           home conforming to Federal Manufactured Home  
 17           Construction and Safety Standards (24 C.F.R.  
 18           3280).

19           “(d) CERTIFICATION.—

20               “(1) METHOD OF CERTIFICATION.—

21               “(A) IN GENERAL.—A certification de-  
 22              scribed in subsection (b)(1)(B) shall be deter-  
 23              mined either by a component-based method or  
 24              a performance-based method.

1           “(B) COMPONENT-BASED METHOD.—A  
2           component-based method is a method which  
3           uses the applicable technical energy efficiency  
4           specifications or ratings (including product la-  
5           beling requirements) for the energy efficient  
6           building envelope component or energy efficient  
7           heating or cooling equipment. The Secretary  
8           shall, in consultation with the Administrator of  
9           the Environmental Protection Agency, develop  
10          prescriptive component-based packages that are  
11          equivalent in energy performance to properties  
12          that qualify under subparagraph (C).

13          “(C) PERFORMANCE-BASED METHOD.—

14               “(i) IN GENERAL.—A performance-  
15               based method is a method which calculates  
16               projected energy usage and cost reductions  
17               in the qualifying new home in relation to  
18               a reference qualifying new home—

19                       “(I) heated by the same energy  
20                       source and heating system type, and

21                       “(II) constructed in accordance  
22                       with the standards of chapter 4 of the  
23                       2000 International Energy Conserva-  
24                       tion Code.

1                   “(ii) COMPUTER SOFTWARE.—Com-  
 2                   puter software shall be used in support of  
 3                   a performance-based method certification  
 4                   under clause (i). Such software shall meet  
 5                   procedures and methods for calculating en-  
 6                   ergy and cost savings in regulations pro-  
 7                   mulgated by the Secretary of Energy. Such  
 8                   regulations on the specifications for soft-  
 9                   ware and verification protocols shall be  
 10                  based on the 2001 California Residential  
 11                  Alternative Calculation Method Approval  
 12                  Manual.

13               “(2) PROVIDER.—A certification described in  
 14               subsection (b)(1)(B) shall be provided by—

15                   “(A) in the case of a component-based  
 16                   method, a local building regulatory authority, a  
 17                   utility, a manufactured home production inspec-  
 18                   tion primary inspection agency (IPIA), or a  
 19                   home energy rating organization, or

20                   “(B) in the case of a performance-based  
 21                   method, an individual recognized by an organi-  
 22                   zation designated by the Secretary for such  
 23                   purposes.

24               “(3) FORM.—



1           “(A) IN GENERAL.—A certification de-  
2           scribed in subsection (b)(1)(B) shall be made in  
3           writing in a manner that specifies in readily  
4           verifiable fashion the energy efficient building  
5           envelope components and energy efficient heat-  
6           ing or cooling equipment installed and their re-  
7           spective rated energy efficiency performance,  
8           and in the case of a performance-based method,  
9           accompanied by a written analysis documenting  
10          the proper application of a permissible energy  
11          performance calculation method to the specific  
12          circumstances of such qualifying new home.

13          “(B) FORM PROVIDED TO BUYER.—A form  
14          documenting the energy efficient building enve-  
15          lope components and energy efficient heating or  
16          cooling equipment installed and their rated en-  
17          ergy efficiency performance shall be provided to  
18          the buyer of the qualifying new home. The form  
19          shall include labeled R-value for insulation  
20          products, NFRC-labeled U-factor and Solar  
21          Heat Gain Coefficient for windows, skylights,  
22          and doors, labeled AFUE ratings for furnaces  
23          and boilers, labeled HSPF ratings for electric  
24          heat pumps, and labeled SEER ratings for air  
25          conditioners.

1           “(C) RATINGS LABEL AFFIXED IN DWELL-  
 2           ING.—A permanent label documenting the rat-  
 3           ings in subparagraph (B) shall be affixed to the  
 4           front of the electrical distribution panel of the  
 5           qualifying new home, or shall be otherwise per-  
 6           manently displayed in a readily inspectable loca-  
 7           tion in such home.

8           “(4) REGULATIONS.—

9           “(A) IN GENERAL.—In prescribing regula-  
 10          tions under this subsection for performance-  
 11          based certification methods, the Secretary, after  
 12          examining the requirements for energy consult-  
 13          ants and home energy ratings providers speci-  
 14          fied by the Mortgage Industry National Accred-  
 15          itation Procedures for Home Energy Rating  
 16          Systems, shall prescribe procedures for calcu-  
 17          lating annual energy usage and cost reductions  
 18          for heating and cooling and for the reporting of  
 19          the results. Such regulations shall—

20               “(i) provide that any calculation pro-  
 21               cedures be fuel neutral such that the same  
 22               energy efficiency measures allow a quali-  
 23               fying new home to be eligible for the credit  
 24               under this section regardless of whether

1           such home uses a gas or oil furnace or  
2           boiler or an electric heat pump, and

3           “(ii) require that any computer soft-  
4           ware allow for the printing of the Federal  
5           tax forms necessary for the credit under  
6           this section and for the printing of forms  
7           for disclosure to the homebuyer.

8           “(B) PROVIDERS.—For purposes of para-  
9           graph (2)(B), the Secretary shall establish re-  
10          quirements for the designation of individuals  
11          based on the requirements for energy consult-  
12          ants and home energy raters specified by the  
13          Mortgage Industry National Accreditation Pro-  
14          cedures for Home Energy Rating Systems.

15          “(e) TERMINATION.—Subsection (a) shall apply to  
16          qualifying new homes purchased during the period begin-  
17          ning on the date of the enactment of this section and end-  
18          ing on December 31, 2007.”.

19          (b) CREDIT MADE PART OF GENERAL BUSINESS  
20          CREDIT.—Subsection (b) of section 38 (relating to current  
21          year business credit), as amended by this Act, is amended  
22          by striking “plus” at the end of paragraph (16), by strik-  
23          ing the period at the end of paragraph (17) and inserting  
24          “, plus”, and by adding at the end the following new para-  
25          graph:

1           “(18) the new energy efficient home credit de-  
2           termined under section 45G.”.

3           (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
4           (relating to certain expenses for which credits are allow-  
5           able) is amended by adding at the end the following new  
6           subsection:

7           “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—  
8           No deduction shall be allowed for that portion of expenses  
9           for a qualifying new home otherwise allowable as a deduc-  
10          tion for the taxable year which is equal to the amount  
11          of the credit determined for such taxable year under sec-  
12          tion 45G.”.

13          (d) LIMITATION ON CARRYBACK.—Subsection (d) of  
14          section 39, as amended by this Act, is amended by adding  
15          at the end the following new paragraph:

16                 “(13) NO CARRYBACK OF NEW ENERGY EFFI-  
17                 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—  
18                 No portion of the unused business credit for any  
19                 taxable year which is attributable to the credit deter-  
20                 mined under section 45G may be carried back to any  
21                 taxable year ending on or before the date of the en-  
22                 actment of section 45G.”.

23          (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS  
24          CREDITS.—Subsection (c) of section 196, as amended by  
25          this Act, is amended by striking “and” at the end of para-

1 graph (10), by striking the period at the end of paragraph  
 2 (11) and inserting “, and”, and by adding after paragraph  
 3 (11) the following new paragraph:

4 “(12) the new energy efficient home credit de-  
 5 termined under section 45G.”.

6 (f) CLERICAL AMENDMENT.—The table of sections  
 7 for subpart D of part IV of subchapter A of chapter 1,  
 8 as amended by this Act, is amended by adding at the end  
 9 the following new item:

“Sec. 45G. New energy efficient home credit.”.

10 (g) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to taxable years ending after the  
 12 date of the enactment of this Act.

13 **SEC. 302. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-  
 15 chapter A of chapter 1 (relating to business-related cred-  
 16 its), as amended by this Act, is amended by adding at  
 17 the end the following new section:

18 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

19 “(a) GENERAL RULE.—For purposes of section 38,  
 20 the energy efficient appliance credit determined under this  
 21 section for the taxable year is an amount equal to the ap-  
 22 plicable amount determined under subsection (b) with re-  
 23 spect to the eligible production of qualified energy efficient  
 24 appliances produced by the taxpayer during the calendar  
 25 year ending with or within the taxable year.

1       “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-  
2 TION.—For purposes of subsection (a)—

3               “(1) APPLICABLE AMOUNT.—The applicable  
4 amount is—

5                       “(A) \$50, in the case of—

6                               “(i) a clothes washer which is manu-  
7 factured with at least a 1.26 MEF, or

8                               “(ii) a refrigerator which consumes at  
9 least 10 percent less kWh per year than  
10 the energy conservation standards for re-  
11 frigerators promulgated by the Department  
12 of Energy effective July 1, 2001, and

13                       “(B) \$100, in the case of—

14                               “(i) a clothes washer which is manu-  
15 factured with at least a 1.42 MEF (at  
16 least 1.5 MEF for washers produced after  
17 2004), or

18                               “(ii) a refrigerator which consumes at  
19 least 15 percent less kWh per year than  
20 such energy conservation standards.

21               “(2) ELIGIBLE PRODUCTION.—

22                       “(A) IN GENERAL.—The eligible produc-  
23 tion of each category of qualified energy effi-  
24 cient appliances is the excess of—

1 “(i) the number of appliances in such  
 2 category which are produced by the tax-  
 3 payer during such calendar year, over

4 “(ii) the average number of appliances  
 5 in such category which were produced by  
 6 the taxpayer during calendar years 1999,  
 7 2000, and 2001.

8 “(B) CATEGORIES.—For purposes of sub-  
 9 paragraph (A), the categories are—

10 “(i) clothes washers described in para-  
 11 graph (1)(A)(i),

12 “(ii) clothes washers described in  
 13 paragraph (1)(B)(i),

14 “(iii) refrigerators described in para-  
 15 graph (1)(A)(ii), and

16 “(iv) refrigerators described in para-  
 17 graph (1)(B)(ii).

18 “(c) LIMITATION ON MAXIMUM CREDIT.—

19 “(1) IN GENERAL.—The maximum amount of  
 20 credit allowed under subsection (a) with respect to  
 21 a taxpayer for all taxable years shall be—

22 “(A) \$30,000,000 with respect to the cred-  
 23 it determined under subsection (b)(1)(A), and

24 “(B) \$30,000,000 with respect to the cred-  
 25 it determined under subsection (b)(1)(B).

1           “(2) LIMITATION BASED ON GROSS RE-  
 2           CEIPTS.—The credit allowed under subsection (a)  
 3           with respect to a taxpayer for the taxable year shall  
 4           not exceed an amount equal to 2 percent of the aver-  
 5           age annual gross receipts of the taxpayer for the 3  
 6           taxable years preceding the taxable year in which  
 7           the credit is determined.

8           “(3) GROSS RECEIPTS.—For purposes of this  
 9           subsection, the rules of paragraphs (2) and (3) of  
 10          section 448(c) shall apply.

11          “(d) DEFINITIONS.—For purposes of this section—

12           “(1) QUALIFIED ENERGY EFFICIENT APPLI-  
 13           ANCE.—The term ‘qualified energy efficient appli-  
 14           ance’ means—

15                   “(A) a clothes washer described in sub-  
 16                   paragraph (A)(i) or (B)(i) of subsection (b)(1),  
 17                   or

18                   “(B) a refrigerator described in subpara-  
 19                   graph (A)(ii) or (B)(ii) of subsection (b)(1).

20           “(2) CLOTHES WASHER.—The term ‘clothes  
 21           washer’ means a residential clothes washer, includ-  
 22           ing a residential style coin operated washer.

23           “(3) REFRIGERATOR.—The term ‘refrigerator’  
 24           means an automatic defrost refrigerator-freezer



1       which has an internal volume of at least 16.5 cubic  
2       feet.

3           “(4) MEF.—The term ‘MEF’ means Modified  
4       Energy Factor (as determined by the Secretary of  
5       Energy).

6       “(e) SPECIAL RULES.—

7           “(1) IN GENERAL.—Rules similar to the rules  
8       of subsections (c), (d), and (e) of section 52 shall  
9       apply for purposes of this section.

10          “(2) AGGREGATION RULES.—All persons treat-  
11       ed as a single employer under subsection (a) or (b)  
12       of section 52 or subsection (m) or (o) of section 414  
13       shall be treated as 1 person for purposes of sub-  
14       section (a).

15          “(f) VERIFICATION.—The taxpayer shall submit such  
16       information or certification as the Secretary, in consulta-  
17       tion with the Secretary of Energy, determines necessary  
18       to claim the credit amount under subsection (a).

19          “(g) TERMINATION.—This section shall not apply—

20           “(1) with respect to refrigerators described in  
21       subsection (b)(1)(A)(ii) produced after December 31,  
22       2004, and

23           “(2) with respect to all other qualified energy  
24       efficient appliances produced after December 31,  
25       2006.”.

1 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-  
 2 lating to transition rules), as amended by this Act, is  
 3 amended by adding at the end the following new para-  
 4 graph:

5 “(14) NO CARRYBACK OF ENERGY EFFICIENT  
 6 APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No  
 7 portion of the unused business credit for any taxable  
 8 year which is attributable to the energy efficient ap-  
 9 pliance credit determined under section 45H may be  
 10 carried to a taxable year ending before January 1,  
 11 2003.”.

12 (c) CONFORMING AMENDMENT.—Section 38(b) (re-  
 13 lating to general business credit), as amended by this Act,  
 14 is amended by striking “plus” at the end of paragraph  
 15 (17), by striking the period at the end of paragraph (18)  
 16 and inserting “, plus”, and by adding at the end the fol-  
 17 lowing new paragraph:

18 “(19) the energy efficient appliance credit de-  
 19 termined under section 45H(a).”.

20 (d) CLERICAL AMENDMENT.—The table of sections  
 21 for subpart D of part IV of subchapter A of chapter 1,  
 22 as amended by this Act, is amended by adding at the end  
 23 the following new item:

“Sec. 45H. Energy efficient appliance credit.”.

1 (e) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to appliances produced after De-  
 3 cember 31, 2002, in taxable years ending after such date.

4 **SEC. 303. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**  
 5 **PROPERTY.**

6 (a) IN GENERAL.—Subpart A of part IV of sub-  
 7 chapter A of chapter 1 (relating to nonrefundable personal  
 8 credits) is amended by inserting after section 25B the fol-  
 9 lowing new section:

10 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

11 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
 12 dividual, there shall be allowed as a credit against the tax  
 13 imposed by this chapter for the taxable year an amount  
 14 equal to the sum of—

15 “(1) 15 percent of the qualified photovoltaic  
 16 property expenditures made by the taxpayer during  
 17 such year,

18 “(2) 15 percent of the qualified solar water  
 19 heating property expenditures made by the taxpayer  
 20 during such year,

21 “(3) 30 percent of the qualified fuel cell prop-  
 22 erty expenditures made by the taxpayer during such  
 23 year,

1           “(4) 30 percent of the qualified wind energy  
2           property expenditures made by the taxpayer during  
3           such year, and

4           “(5) the sum of the qualified Tier 2 energy effi-  
5           cient building property expenditures made by the  
6           taxpayer during such year.

7           “(b) LIMITATIONS.—

8           “(1) MAXIMUM CREDIT.—The credit allowed  
9           under subsection (a) shall not exceed—

10           “(A) \$2,000 for property described in sub-  
11           section (d)(1),

12           “(B) \$2,000 for property described in sub-  
13           section (d)(2),

14           “(C) \$1,000 for each kilowatt of capacity  
15           of property described in subsection (d)(4),

16           “(D) \$2,000 for property described in sub-  
17           section (d)(5), and

18           “(E) for property described in subsection  
19           (d)(6)—

20           “(i) \$75 for each electric heat pump  
21           water heater,

22           “(ii) \$250 for each electric heat  
23           pump,

24           “(iii) \$500 for each natural gas heat  
25           pump,

1 “(iv) \$250 for each central air condi-  
 2 tioner,

3 “(v) \$75 for each natural gas water  
 4 heater, and

5 “(vi) \$250 for each geothermal heat  
 6 pump.

7 “(2) SAFETY CERTIFICATIONS.—No credit shall  
 8 be allowed under this section for an item of property  
 9 unless—

10 “(A) in the case of solar water heating  
 11 property, such property is certified for perform-  
 12 ance and safety by the non-profit Solar Rating  
 13 Certification Corporation or a comparable enti-  
 14 ty endorsed by the government of the State in  
 15 which such property is installed,

16 “(B) in the case of a photovoltaic property,  
 17 a fuel cell property, or a wind energy property,  
 18 such property meets appropriate fire and elec-  
 19 tric code requirements, and

20 “(C) in the case of property described in  
 21 subsection (d)(6), such property meets the per-  
 22 formance and quality standards, and the certifi-  
 23 cation requirements (if any), which—

24 “(i) have been prescribed by the Sec-  
 25 retary by regulations (after consultation

1 with the Secretary of Energy or the Ad-  
 2 ministrator of the Environmental Protec-  
 3 tion Agency, as appropriate),

4 “(ii) in the case of the energy effi-  
 5 ciency ratio (EER)—

6 “(I) require measurements to be  
 7 based on published data which is test-  
 8 ed by manufacturers at 95 degrees  
 9 Fahrenheit, and

10 “(II) do not require ratings to be  
 11 based on certified data of the Air  
 12 Conditioning and Refrigeration Insti-  
 13 tute, and

14 “(iii) are in effect at the time of the  
 15 acquisition of the property.

16 “(3) LIMITATION BASED ON AMOUNT OF  
 17 TAX.—The credit allowed under subsection (a) for  
 18 the taxable year shall not exceed the excess of—

19 “(A) the sum of the regular tax liability  
 20 (as defined in section 26(b)) plus the tax im-  
 21 posed by section 55, over

22 “(B) the sum of the credits allowable  
 23 under this subpart (other than this section and  
 24 sections 23 and 25D) and section 27 for the  
 25 taxable year.

1       “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
 2 credit allowable under subsection (a) exceeds the limita-  
 3 tion imposed by subsection (b)(3) for such taxable year,  
 4 such excess shall be carried to the succeeding taxable year  
 5 and added to the credit allowable under subsection (a) for  
 6 such succeeding taxable year.

7       “(d) DEFINITIONS.—For purposes of this section—

8               “(1) QUALIFIED SOLAR WATER HEATING PROP-  
 9 erty expenditure.—The term ‘qualified solar  
 10 water heating property expenditure’ means an ex-  
 11 penditure for property to heat water for use in a  
 12 dwelling unit located in the United States and used  
 13 as a residence by the taxpayer if at least half of the  
 14 energy used by such property for such purpose is de-  
 15 rived from the sun.

16              “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-  
 17 penditure.—The term ‘qualified photovoltaic prop-  
 18 erty expenditure’ means an expenditure for property  
 19 that uses solar energy to generate electricity for use  
 20 in such a dwelling unit.

21              “(3) SOLAR PANELS.—No expenditure relating  
 22 to a solar panel or other property installed as a roof  
 23 (or portion thereof) shall fail to be treated as prop-  
 24 erty described in paragraph (1) or (2) solely because

1 it constitutes a structural component of the struc-  
 2 ture on which it is installed.

3 “(4) QUALIFIED FUEL CELL PROPERTY EX-  
 4 PENDITURE.—The term ‘qualified fuel cell property  
 5 expenditure’ means an expenditure for qualified fuel  
 6 cell property (as defined in section 48(a)(4)) in-  
 7 stalled on or in connection with such a dwelling unit.

8 “(5) QUALIFIED WIND ENERGY PROPERTY EX-  
 9 PENDITURE.—The term ‘qualified wind energy prop-  
 10 erty expenditure’ means an expenditure for property  
 11 which uses wind energy to generate electricity for  
 12 use in such a dwelling unit.

13 “(6) QUALIFIED TIER 2 ENERGY EFFICIENT  
 14 BUILDING PROPERTY EXPENDITURE.—

15 “(A) IN GENERAL.—The term ‘qualified  
 16 Tier 2 energy efficient building property ex-  
 17 penditure’ means an expenditure for any Tier 2  
 18 energy efficient building property.

19 “(B) TIER 2 ENERGY EFFICIENT BUILDING  
 20 PROPERTY.—The term ‘Tier 2 energy efficient  
 21 building property’ means—

22 “(i) an electric heat pump water heat-  
 23 er which yields an energy factor of at least  
 24 1.7 in the standard Department of Energy  
 25 test procedure,



1           “(ii) an electric heat pump which has  
2           a heating seasonal performance factor  
3           (HSPF) of at least 9, a seasonal energy ef-  
4           ficiency ratio (SEER) of at least 15, and  
5           an energy efficiency ratio (EER) of at  
6           least 12.5,

7           “(iii) a natural gas heat pump which  
8           has a coefficient of performance of at least  
9           1.25 for heating and of at least 0.70 for  
10          cooling,

11          “(iv) a central air conditioner which  
12          has a seasonal energy efficiency ratio  
13          (SEER) of at least 15 and an energy effi-  
14          ciency ratio (EER) of at least 12.5,

15          “(v) a natural gas water heater which  
16          has an energy factor of at least 0.80 in the  
17          standard Department of Energy test proce-  
18          dure, and

19          “(vi) a geothermal heat pump which  
20          has an energy efficiency ratio (EER) of at  
21          least 21.

22          “(7) LABOR COSTS.—Expenditures for labor  
23          costs properly allocable to the onsite preparation, as-  
24          sembly, or original installation of the property de-  
25          scribed in paragraph (1), (2), (4), (5), or (6) and for

1        piping or wiring to interconnect such property to the  
 2        dwelling unit shall be taken into account for pur-  
 3        poses of this section.

4            “(8) SWIMMING POOLS, ETC., USED AS STOR-  
 5        AGE MEDIUM.—Expenditures which are properly al-  
 6        locable to a swimming pool, hot tub, or any other  
 7        energy storage medium which has a function other  
 8        than the function of such storage shall not be taken  
 9        into account for purposes of this section.

10       “(e) SPECIAL RULES.—For purposes of this  
 11       section—

12           “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
 13        CUPANCY.—In the case of any dwelling unit which is  
 14        jointly occupied and used during any calendar year  
 15        as a residence by 2 or more individuals the following  
 16        shall apply:

17           “(A) The amount of the credit allowable,  
 18        under subsection (a) by reason of expenditures  
 19        (as the case may be) made during such cal-  
 20        endar year by any of such individuals with re-  
 21        spect to such dwelling unit shall be determined  
 22        by treating all of such individuals as 1 taxpayer  
 23        whose taxable year is such calendar year.

24           “(B) There shall be allowable, with respect  
 25        to such expenditures to each of such individ-

1 uals, a credit under subsection (a) for the tax-  
 2 able year in which such calendar year ends in  
 3 an amount which bears the same ratio to the  
 4 amount determined under subparagraph (A) as  
 5 the amount of such expenditures made by such  
 6 individual during such calendar year bears to  
 7 the aggregate of such expenditures made by all  
 8 of such individuals during such calendar year.

9 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
 10 HOUSING CORPORATION.—In the case of an indi-  
 11 vidual who is a tenant-stockholder (as defined in sec-  
 12 tion 216) in a cooperative housing corporation (as  
 13 defined in such section), such individual shall be  
 14 treated as having made his tenant-stockholder’s pro-  
 15 portionate share (as defined in section 216(b)(3)) of  
 16 any expenditures of such corporation.

17 “(3) CONDOMINIUMS.—

18 “(A) IN GENERAL.—In the case of an indi-  
 19 vidual who is a member of a condominium man-  
 20 agement association with respect to a condo-  
 21 minium which the individual owns, such indi-  
 22 vidual shall be treated as having made the indi-  
 23 vidual’s proportionate share of any expenditures  
 24 of such association.

1           “(B) CONDOMINIUM MANAGEMENT ASSO-  
 2           CIATION.—For purposes of this paragraph, the  
 3           term ‘condominium management association’  
 4           means an organization which meets the require-  
 5           ments of paragraph (1) of section 528(c) (other  
 6           than subparagraph (E) thereof) with respect to  
 7           a condominium project substantially all of the  
 8           units of which are used as residences.

9           “(4) ALLOCATION IN CERTAIN CASES.—If less  
 10          than 80 percent of the use of an item is for nonbusi-  
 11          ness purposes, only that portion of the expenditures  
 12          for such item which is properly allocable to use for  
 13          nonbusiness purposes shall be taken into account.

14          “(5) WHEN EXPENDITURE MADE; AMOUNT OF  
 15          EXPENDITURE.—

16               “(A) IN GENERAL.—Except as provided in  
 17               subparagraph (B), an expenditure with respect  
 18               to an item shall be treated as made when the  
 19               original installation of the item is completed.

20               “(B) EXPENDITURES PART OF BUILDING  
 21               CONSTRUCTION.—In the case of an expenditure  
 22               in connection with the construction or recon-  
 23               struction of a structure, such expenditure shall  
 24               be treated as made when the original use of the

1           constructed or reconstructed structure by the  
2           taxpayer begins.

3           “(C) AMOUNT.—The amount of any ex-  
4           penditure shall be the cost thereof.

5           “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
6           ERGY FINANCING.—For purposes of determining the  
7           amount of expenditures made by any individual with  
8           respect to any dwelling unit, there shall not be taken  
9           in to account expenditures which are made from  
10          subsidized energy financing (as defined in section  
11          48(a)(5)(C)).

12          “(f) BASIS ADJUSTMENTS.—For purposes of this  
13         subtitle, if a credit is allowed under this section for any  
14         expenditure with respect to any property, the increase in  
15         the basis of such property which would (but for this sub-  
16         section) result from such expenditure shall be reduced by  
17         the amount of the credit so allowed.

18          “(g) TERMINATION.—The credit allowed under this  
19         section shall not apply to expenditures after December 31,  
20         2007.”.

21          (b) CONFORMING AMENDMENTS.—

22                 (1) Subsection (a) of section 1016, as amended  
23                 by this Act, is amended by striking “and” at the end  
24                 of paragraph (29), by striking the period at the end

1 of paragraph (30) and inserting “, and”, and by  
 2 adding at the end the following new paragraph:

3 “(31) to the extent provided in section 25C(f),  
 4 in the case of amounts with respect to which a credit  
 5 has been allowed under section 25C.”.

6 (2) Section 24(b)(3)(B) is amended by striking  
 7 “23 and 25B” and inserting “23, 25B, and 25C”.

8 (3) Section 25(e)(1)(C) is amended by inserting  
 9 “25C,” after “25B,”.

10 (4) Section 25B(g)(2) is amended by striking  
 11 “section 23” and inserting “sections 23 and 25C”.

12 (5) Section 26(a)(1) is amended by striking  
 13 “and 25B” and inserting “25B, and 25C”.

14 (6) Section 904(h) is amended by striking “and  
 15 25B” and inserting “25B, and 25C”.

16 (7) Section 1400C(d) is amended by striking  
 17 “and 25B” and inserting “25B, and 25C”.

18 (8) The table of sections for subpart A of part  
 19 IV of subchapter A of chapter 1 is amended by in-  
 20 serting after the item relating to section 25B the fol-  
 21 lowing new item:

“Sec. 25C. Residential energy efficient property.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to expenditures after December 31,  
 24 2002, in taxable years ending after such date.

1 **SEC. 304. CREDIT FOR BUSINESS INSTALLATION OF QUALI-**  
 2 **FIED FUEL CELLS.**

3 (a) IN GENERAL.—Subparagraph (A) of section  
 4 48(a)(3) (defining energy property) is amended by strik-  
 5 ing “or” at the end of clause (i), by adding “or” at the  
 6 end of clause (ii), and by inserting after clause (ii) the  
 7 following new clause:

8 “(iii) qualified fuel cell property,”.

9 (b) QUALIFIED FUEL CELL PROPERTY.—Subsection  
 10 (a) of section 48 is amended by redesignating paragraphs  
 11 (4) and (5) as paragraphs (5) and (6), respectively, and  
 12 by inserting after paragraph (3) the following new para-  
 13 graph:

14 “(4) QUALIFIED FUEL CELL PROPERTY.—For  
 15 purposes of this subsection—

16 “(A) IN GENERAL.—The term ‘qualified  
 17 fuel cell property’ means a fuel cell power plant  
 18 that—

19 “(i) generates at least 1 kilowatt of  
 20 electricity using an electrochemical process,  
 21 and

22 “(ii) has an electricity-only generation  
 23 efficiency greater than 30 percent.

24 “(B) LIMITATION.—In the case of quali-  
 25 fied fuel cell property placed in service during  
 26 the taxable year, the credit determined under

paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

“(i) 30 percent of the basis of such property, or

“(ii) \$1,000 for each kilowatt of capacity of such property.

“(C) FUEL CELL POWER PLANT.—The term ‘fuel cell power plant’ means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

“(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2007.”.

(c) LIMITATION.—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

“(A) IN GENERAL.—The energy percentage is—

“(i) in the case of qualified fuel cell property, 30 percent, and

“(ii) in the case of any other energy property, 10 percent.”.

(d) CONFORMING AMENDMENTS.—



1 (A) Section 29(b)(3)(A)(i)(III) is amended  
 2 by striking “section 48(a)(4)(C)” and inserting  
 3 “section 48(a)(5)(C)”.

4 (B) Section 48(a)(1) is amended by insert-  
 5 ing “except as provided in paragraph (4)(B),”  
 6 before “the energy”.

7 (e) EFFECTIVE DATE.—The amendments made by  
 8 this subsection shall apply to property placed in service  
 9 after December 31, 2002, under rules similar to the rules  
 10 of section 48(m) of the Internal Revenue Code of 1986  
 11 (as in effect on the day before the date of the enactment  
 12 of the Revenue Reconciliation Act of 1990).

13 **SEC. 305. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**  
 14 **DUCTION.**

15 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 16 ter 1 is amended by inserting after section 179A the fol-  
 17 lowing new section:

18 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**  
 19 **DEDUCTION.**

20 “(a) IN GENERAL.—There shall be allowed as a de-  
 21 duction for the taxable year an amount equal to the energy  
 22 efficient commercial building property expenditures made  
 23 by a taxpayer for the taxable year.

24 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The  
 25 amount of energy efficient commercial building property

1 expenditures taken into account under subsection (a) shall  
 2 not exceed an amount equal to the product of—

3 “(1) \$2.25, and

4 “(2) the square footage of the building with re-  
 5 spect to which the expenditures are made.

6 “(c) YEAR DEDUCTION ALLOWED.—The deduction  
 7 under subsection (a) shall be allowed in the taxable year  
 8 in which the construction of the building is completed.

9 “(d) ENERGY EFFICIENT COMMERCIAL BUILDING  
 10 PROPERTY EXPENDITURES.—For purposes of this  
 11 section—

12 “(1) IN GENERAL.—The term ‘energy efficient  
 13 commercial building property expenditures’ means  
 14 an amount paid or incurred for energy efficient com-  
 15 mercial building property installed on or in connec-  
 16 tion with new construction or reconstruction of  
 17 property—

18 “(A) for which depreciation is allowable  
 19 under section 167,

20 “(B) which is located in the United States,  
 21 and

22 “(C) the construction or erection of which  
 23 is completed by the taxpayer.

24 Such property includes all residential rental prop-  
 25 erty, including low-rise multifamily structures and

1 single family housing property which is not within  
 2 the scope of Standard 90.1–1999 (described in para-  
 3 graph (2)). Such term includes expenditures for  
 4 labor costs properly allocable to the onsite prepara-  
 5 tion, assembly, or original installation of the prop-  
 6 erty.

7 “(2) ENERGY EFFICIENT COMMERCIAL BUILD-  
 8 ING PROPERTY.—For purposes of paragraph (1)—

9 “(A) IN GENERAL.—The term ‘energy effi-  
 10 cient commercial building property’ means any  
 11 property which reduces total annual energy and  
 12 power costs with respect to the lighting, heat-  
 13 ing, cooling, ventilation, and hot water supply  
 14 systems of the building by 50 percent or more  
 15 in comparison to a reference building which  
 16 meets the requirements of Standard 90.1–1999  
 17 of the American Society of Heating, Refrig-  
 18 erating, and Air Conditioning Engineers and  
 19 the Illuminating Engineering Society of North  
 20 America using methods of calculation under  
 21 subparagraph (B) and certified by qualified  
 22 professionals as provided under paragraph (5).

23 “(B) METHODS OF CALCULATION.—The  
 24 Secretary, in consultation with the Secretary of  
 25 Energy, shall promulgate regulations which de-

1       scribe in detail methods for calculating and  
2       verifying energy and power consumption and  
3       cost, taking into consideration the provisions of  
4       the 2001 California Nonresidential Alternative  
5       Calculation Method Approval Manual. These  
6       regulations shall meet the following require-  
7       ments:

8               “(i) In calculating tradeoffs and en-  
9               ergy performance, the regulations shall  
10              prescribe the costs per unit of energy and  
11              power, such as kilowatt hour, kilowatt, gal-  
12              lon of fuel oil, and cubic foot or Btu of  
13              natural gas, which may be dependent on  
14              time of usage.

15             “(ii) The calculational methodology  
16             shall require that compliance be dem-  
17             onstrated for a whole building. If some sys-  
18             tems of the building, such as lighting, are  
19             designed later than other systems of the  
20             building, the method shall provide that  
21             either—

22                   “(I) the expenses taken into ac-  
23                   count under paragraph (1) shall not  
24                   occur until the date designs for all en-

1 energy-using systems of the building are  
2 completed,

3 “(II) the energy performance of  
4 all systems and components not yet  
5 designed shall be assumed to comply  
6 minimally with the requirements of  
7 such Standard 90.1–1999, or

8 “(III) the expenses taken into ac-  
9 count under paragraph (1) shall be a  
10 fraction of such expenses based on the  
11 performance of less than all energy-  
12 using systems in accordance with  
13 clause (iii).

14 “(iii) The expenditures in connection  
15 with the design of subsystems in the build-  
16 ing, such as the envelope, the heating, ven-  
17 tilation, air conditioning and water heating  
18 system, and the lighting system shall be al-  
19 located to the appropriate building sub-  
20 system based on system-specific energy  
21 cost savings targets in regulations promul-  
22 gated by the Secretary of Energy which  
23 are equivalent, using the calculation meth-  
24 odology, to the whole building requirement  
25 of 50 percent savings.

1           “(iv) The calculational methods under  
2           this subparagraph need not comply fully  
3           with section 11 of such Standard 90.1–  
4           1999.

5           “(v) The calculational methods shall  
6           be fuel neutral, such that the same energy  
7           efficiency features shall qualify a building  
8           for the deduction under this subsection re-  
9           gardless of whether the heating source is a  
10          gas or oil furnace or an electric heat pump.

11          “(vi) The calculational methods shall  
12          provide appropriate calculated energy sav-  
13          ings for design methods and technologies  
14          not otherwise credited in either such  
15          Standard 90.1–1999 or in the 2001 Cali-  
16          fornia Nonresidential Alternative Calcula-  
17          tion Method Approval Manual, including  
18          the following:

19                  “(I) Natural ventilation.

20                  “(II) Evaporative cooling.

21                  “(III) Automatic lighting controls  
22                  such as occupancy sensors, photocells,  
23                  and timeclocks.

24                  “(IV) Daylighting.

1           “(V) Designs utilizing semi-con-  
2           ditioned spaces that maintain ade-  
3           quate comfort conditions without air  
4           conditioning or without heating.

5           “(VI) Improved fan system effi-  
6           ciency, including reductions in static  
7           pressure.

8           “(VII) Advanced unloading  
9           mechanisms for mechanical cooling,  
10          such as multiple or variable speed  
11          compressors.

12          “(VIII) The calculational meth-  
13          ods may take into account the extent  
14          of commissioning in the building, and  
15          allow the taxpayer to take into ac-  
16          count measured performance that ex-  
17          ceeds typical performance.

18          “(C) COMPUTER SOFTWARE.—

19               “(i) IN GENERAL.—Any calculation  
20               under this paragraph shall be prepared by  
21               qualified computer software.

22               “(ii) QUALIFIED COMPUTER SOFT-  
23               WARE.—For purposes of this subpara-  
24               graph, the term ‘qualified computer soft-  
25               ware’ means software—

1                   “(I) for which the software de-  
2                   signer has certified that the software  
3                   meets all procedures and detailed  
4                   methods for calculating energy and  
5                   power consumption and costs as re-  
6                   quired by the Secretary,

7                   “(II) which provides such forms  
8                   as required to be filed by the Sec-  
9                   retary in connection with energy effi-  
10                  ciency of property and the deduction  
11                  allowed under this subsection, and

12                  “(III) which provides a notice  
13                  form which summarizes the energy ef-  
14                  ficiency features of the building and  
15                  its projected annual energy costs.

16                  “(3) ALLOCATION OF DEDUCTION FOR PUBLIC  
17                  PROPERTY.—In the case of energy efficient commer-  
18                  cial building property installed on or in public prop-  
19                  erty, the Secretary shall promulgate a regulation to  
20                  allow the allocation of the deduction to the person  
21                  primarily responsible for designing the property in  
22                  lieu of the public entity which is the owner of such  
23                  property. Such person shall be treated as the tax-  
24                  payer for purposes of this subsection.



1           “(4) NOTICE TO OWNER.—The qualified indi-  
2       vidual shall provide an explanation to the owner of  
3       the building regarding the energy efficiency features  
4       of the building and its projected annual energy costs  
5       as provided in the notice under paragraph  
6       (2)(C)(ii)(III).

7           “(5) CERTIFICATION.—

8           “(A) IN GENERAL.—Except as provided in  
9       this paragraph, the Secretary shall prescribe  
10      procedures for the inspection and testing for  
11      compliance of buildings that are comparable,  
12      given the difference between commercial and  
13      residential buildings, to the requirements in the  
14      Mortgage Industry National Accreditation Pro-  
15      cedures for Home Energy Rating Systems.

16          “(B) QUALIFIED INDIVIDUALS.—Individ-  
17      uals qualified to determine compliance shall be  
18      only those individuals who are recognized by an  
19      organization certified by the Secretary for such  
20      purposes. The Secretary may qualify a Home  
21      Ratings Systems Organization, a local building  
22      code agency, a State or local energy office, a  
23      utility, or any other organization which meets  
24      the requirements prescribed under this section.

1                   “(C) PROFICIENCY OF QUALIFIED INDIVID-  
2                   UALS.—The Secretary shall consult with non-  
3                   profit organizations and State agencies with ex-  
4                   pertise in energy efficiency calculations and in-  
5                   spections to develop proficiency tests and train-  
6                   ing programs to qualify individuals to determine  
7                   compliance.

8                   “(e) BASIS REDUCTION.—For purposes of this sub-  
9                   title, if a deduction is allowed under this section with re-  
10                  spect to any energy efficient commercial building property,  
11                  the basis of such property shall be reduced by the amount  
12                  of the deduction so allowed.

13                  “(f) REGULATIONS.—The Secretary shall promulgate  
14                  such regulations as necessary to take into account new  
15                  technologies regarding energy efficiency and renewable en-  
16                  ergy for purposes of determining energy efficiency and  
17                  savings under this section.

18                  “(g) TERMINATION.—This section shall not apply  
19                  with respect to any energy efficient commercial building  
20                  property expenditures in connection with property—

21                         “(1) the plans for which are not certified under  
22                         subsection (d)(5) on or before December 31, 2007,  
23                         and

24                         “(2) the construction of which is not completed  
25                         on or before December 31, 2009.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 1016(a), as amended by this Act, is  
3 amended by striking “and” at the end of paragraph  
4 (30), by striking the period at the end of paragraph  
5 (31) and inserting “, and”, and by adding at the  
6 end the following new paragraph:

7 “(32) to the extent provided in section  
8 179B(e).”.

9 (2) Section 1245(a) is amended by inserting  
10 “179B,” after “179A,” both places it appears in  
11 paragraphs (2)(C) and (3)(C).

12 (3) Section 1250(b)(3) is amended by inserting  
13 before the period at the end of the first sentence “or  
14 by section 179B”.

15 (4) Section 263(a)(1) is amended by striking  
16 “or” at the end of subparagraph (G), by striking the  
17 period at the end of subparagraph (H) and inserting  
18 “, or”, and by inserting after subparagraph (H) the  
19 following new subparagraph:

20 “(I) expenditures for which a deduction is  
21 allowed under section 179B.”.

22 (5) Section 312(k)(3)(B) is amended by strik-  
23 ing “or 179A” each place it appears in the heading  
24 and text and inserting “, 179A, or 179B”.

1 (c) CLERICAL AMENDMENT.—The table of sections  
 2 for part VI of subchapter B of chapter 1 is amended by  
 3 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.

4 (d) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to taxable years beginning after  
 6 September 30, 2002.

7 **SEC. 306. ALLOWANCE OF DEDUCTION FOR QUALIFIED**  
 8 **NEW OR RETROFITTED ENERGY MANAGE-**  
 9 **MENT DEVICES.**

10 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 11 ter 1 (relating to itemized deductions for individuals and  
 12 corporations), as amended by this Act, is amended by in-  
 13 serting after section 179B the following new section:

14 **“SEC. 179C. DEDUCTION FOR QUALIFIED NEW OR RETRO-**  
 15 **FITTED ENERGY MANAGEMENT DEVICES.**

16 “(a) ALLOWANCE OF DEDUCTION.—In the case of a  
 17 taxpayer who is a supplier of electric energy or natural  
 18 gas or a provider of electric energy or natural gas services,  
 19 there shall be allowed as a deduction an amount equal to  
 20 the cost of each qualified energy management device  
 21 placed in service during the taxable year.

22 “(b) MAXIMUM DEDUCTION.—The deduction allowed  
 23 by this section with respect to each qualified energy man-  
 24 agement device shall not exceed \$30.

1       “(c) QUALIFIED ENERGY MANAGEMENT DEVICE.—

2   The term ‘qualified energy management device’ means any  
3   tangible property to which section 168 applies if such  
4   property is a meter or metering device—

5               “(1) which is acquired and used by the tax-  
6       payer to enable consumers to manage their purchase  
7       or use of electricity or natural gas in response to en-  
8       ergy price and usage signals, and

9               “(2) which permits reading of energy price and  
10      usage signals on at least a daily basis.

11      “(d) PROPERTY USED OUTSIDE THE UNITED  
12   STATES NOT QUALIFIED.—No deduction shall be allowed  
13   under subsection (a) with respect to property which is  
14   used predominantly outside the United States or with re-  
15   spect to the portion of the cost of any property taken into  
16   account under section 179.

17      “(e) BASIS REDUCTION.—

18               “(1) IN GENERAL.—For purposes of this title,  
19      the basis of any property shall be reduced by the  
20      amount of the deduction with respect to such prop-  
21      erty which is allowed by subsection (a).

22               “(2) ORDINARY INCOME RECAPTURE.—For  
23      purposes of section 1245, the amount of the deduc-  
24      tion allowable under subsection (a) with respect to  
25      any property that is of a character subject to the al-

1 lowance for depreciation shall be treated as a deduc-  
2 tion allowed for depreciation under section 167.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 263(a)(1), as amended by this Act,  
5 is amended by striking “or” at the end of subpara-  
6 graph (H), by striking the period at the end of sub-  
7 paragraph (I) and inserting “, or”, and by inserting  
8 after subparagraph (I) the following new subpara-  
9 graph:

10 “(J) expenditures for which a deduction is  
11 allowed under section 179C.”.

12 (2) Section 312(k)(3)(B), as amended by this  
13 Act, is amended by striking “or 179B” each place  
14 it appears in the heading and text and inserting “,  
15 179B, or 179C”.

16 (3) Section 1016(a), as amended by this Act, is  
17 amended by striking “and” at the end of paragraph  
18 (31), by striking the period at the end of paragraph  
19 (32) and inserting “, and”, and by adding at the  
20 end the following new paragraph:

21 “(33) to the extent provided in section  
22 179C(e)(1).”.

23 (4) Section 1245(a), as amended by this Act, is  
24 amended by inserting “179C,” after “179B,” both  
25 places it appears in paragraphs (2)(C) and (3)(C).

1           (5) The table of contents for subpart B of part  
 2           IV of subchapter A of chapter 1, as amended by this  
 3           Act, is amended by inserting after the item relating  
 4           to section 179B the following new item:

“Sec. 179C. Deduction for qualified new or retrofitted energy  
 management devices.”.

5           (c) EFFECTIVE DATE.—The amendments made by  
 6           this section shall apply to qualified energy management  
 7           devices placed in service after the date of the enactment  
 8           of this Act, in taxable years ending after such date.

9   **SEC. 307. THREE-YEAR APPLICABLE RECOVERY PERIOD**  
 10                   **FOR DEPRECIATION OF QUALIFIED ENERGY**  
 11                   **MANAGEMENT DEVICES.**

12           (a) IN GENERAL.—Subparagraph (A) of section  
 13           168(e)(3) (relating to classification of property) is amend-  
 14           ed by striking “and” at the end of clause (ii), by striking  
 15           the period at the end of clause (iii) and inserting “, and”,  
 16           and by adding at the end the following new clause:

17                   “(iv) any qualified energy manage-  
 18                   ment device.”.

19           (b) DEFINITION OF QUALIFIED ENERGY MANAGE-  
 20           MENT DEVICE.—Section 168(i) (relating to definitions  
 21           and special rules) is amended by inserting at the end the  
 22           following new paragraph:

23                   “(15) QUALIFIED ENERGY MANAGEMENT DE-  
 24                   VICE.—The term ‘qualified energy management de-

1       vice’ means any qualified energy management device  
 2       as defined in section 179C(c) which is placed in  
 3       service by a taxpayer who is a supplier of electric en-  
 4       ergy or natural gas or a provider of electric energy  
 5       or natural gas services.”.

6       (c) EFFECTIVE DATE.—The amendments made by  
 7       this section shall apply to property placed in service after  
 8       the date of the enactment of this Act, in taxable years  
 9       ending after such date.

10   **SEC. 308. ENERGY CREDIT FOR COMBINED HEAT AND**  
 11       **POWER SYSTEM PROPERTY.**

12       (a) IN GENERAL.—Subparagraph (A) of section  
 13       48(a)(3) (defining energy property), as amended by this  
 14       Act, is amended by striking “or” at the end of clause (ii),  
 15       by adding “or” at the end of clause (iii), and by inserting  
 16       after clause (iii) the following new clause:

17                       “(iv) combined heat and power system  
 18                       property,”.

19       (b) COMBINED HEAT AND POWER SYSTEM PROP-  
 20       PERTY.—Subsection (a) of section 48, as amended by this  
 21       Act, is amended by redesignating paragraphs (5) and (6)  
 22       as paragraphs (6) and (7), respectively, and by inserting  
 23       after paragraph (4) the following new paragraph:

24                       “(5) COMBINED HEAT AND POWER SYSTEM  
 25       PROPERTY.—For purposes of this subsection—



1           “(A) COMBINED HEAT AND POWER SYS-  
2           TEM PROPERTY.—The term ‘combined heat and  
3           power system property’ means property com-  
4           prising a system—

5                   “(i) which uses the same energy  
6                   source for the simultaneous or sequential  
7                   generation of electrical power, mechanical  
8                   shaft power, or both, in combination with  
9                   the generation of steam or other forms of  
10                  useful thermal energy (including heating  
11                  and cooling applications),

12                   “(ii) which has an electrical capacity  
13                   of more than 50 kilowatts or a mechanical  
14                   energy capacity of more than 67 horse-  
15                   power or an equivalent combination of elec-  
16                  trical and mechanical energy capacities,

17                   “(iii) which produces—

18                           “(I) at least 20 percent of its  
19                           total useful energy in the form of  
20                           thermal energy, and

21                           “(II) at least 20 percent of its  
22                           total useful energy in the form of elec-  
23                           trical or mechanical power (or com-  
24                           bination thereof),

“(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

“(v) which is placed in service after December 31, 2002, and before January 1, 2007.

“(B) SPECIAL RULES.—

“(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

“(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

“(II) the denominator of which is the lower heating value of the primary fuel source for the system.

1 “(ii) DETERMINATIONS MADE ON BTU  
 2 BASIS.—The energy efficiency percentage  
 3 and the percentages under subparagraph  
 4 (A)(iii) shall be determined on a Btu basis.

5 “(iii) INPUT AND OUTPUT PROPERTY  
 6 NOT INCLUDED.—The term ‘combined heat  
 7 and power system property’ does not in-  
 8 clude property used to transport the en-  
 9 ergy source to the facility or to distribute  
 10 energy produced by the facility.

11 “(iv) PUBLIC UTILITY PROPERTY.—  
 12 “(I) ACCOUNTING RULE FOR  
 13 PUBLIC UTILITY PROPERTY.—If the  
 14 combined heat and power system  
 15 property is public utility property (as  
 16 defined in section 168(i)(10)), the  
 17 taxpayer may only claim the credit  
 18 under the subsection if, with respect  
 19 to such property, the taxpayer uses a  
 20 normalization method of accounting.

21 “(II) CERTAIN EXCEPTION NOT  
 22 TO APPLY.—The matter following  
 23 paragraph (3)(D) shall not apply to  
 24 combined heat and power system  
 25 property.

1           “(C) EXTENSION OF DEPRECIATION RE-  
 2           COVERY PERIOD.—If a taxpayer is allowed cred-  
 3           it under this section for combined heat and  
 4           power system property and such property would  
 5           (but for this subparagraph) have a class life of  
 6           15 years or less under section 168, such prop-  
 7           erty shall be treated as having a 22-year class  
 8           life for purposes of section 168.”.

9           (c) NO CARRYBACK OF ENERGY CREDIT BEFORE  
 10          EFFECTIVE DATE.—Subsection (d) of section 39, as  
 11          amended by this Act, is amended by adding at the end  
 12          the following new paragraph:

13               “(15) NO CARRYBACK OF ENERGY CREDIT BE-  
 14          FORE EFFECTIVE DATE.—No portion of the unused  
 15          business credit for any taxable year which is attrib-  
 16          utable to the energy credit with respect to property  
 17          described in section 48(a)(5) may be carried back to  
 18          a taxable year ending before January 1, 2003.”.

19          (d) CONFORMING AMENDMENTS.—

20               (A) Section 25C(e)(6), as added by this  
 21          Act, is amended by striking “section  
 22          48(a)(5)(C)” and inserting “section  
 23          48(a)(6)(C)”.

24               (B) Section 29(b)(3)(A)(i)(III), as amend-  
 25          ed by this Act, is amended by striking “section

1           48(a)(5)(C)”       and       inserting       “section  
2           48(a)(6)(C)”.

3       (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to property placed in service after  
5 December 31, 2002, in taxable years ending after such  
6 date.

7       **SEC. 309. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**  
8                               **MENTS TO EXISTING HOMES.**

9       (a) IN GENERAL.—Subpart A of part IV of sub-  
10 chapter A of chapter 1 (relating to nonrefundable personal  
11 credits), as amended by this Act, is amended by inserting  
12 after section 25C the following new section:

13       **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**  
14                               **ING HOMES.**

15       “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
16 dividual, there shall be allowed as a credit against the tax  
17 imposed by this chapter for the taxable year an amount  
18 equal to 10 percent of the amount paid or incurred by  
19 the taxpayer for qualified energy efficiency improvements  
20 installed during such taxable year.

21       “(b) LIMITATIONS.—

22               “(1) MAXIMUM CREDIT.—The credit allowed by  
23 this section with respect to a dwelling shall not ex-  
24 ceed \$300.

1           “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER  
 2           ON SAME DWELLING TAKEN INTO ACCOUNT.—If a  
 3           credit was allowed to the taxpayer under subsection  
 4           (a) with respect to a dwelling in 1 or more prior tax-  
 5           able years, the amount of the credit otherwise allow-  
 6           able for the taxable year with respect to that dwell-  
 7           ing shall not exceed the amount of \$300 reduced by  
 8           the sum of the credits allowed under subsection (a)  
 9           to the taxpayer with respect to the dwelling for all  
 10          prior taxable years.

11          “(3) LIMITATION BASED ON AMOUNT OF  
 12          TAX.—The credit allowed under subsection (a) for  
 13          the taxable year shall not exceed the excess of—

14               “(A) the sum of the regular tax liability  
 15               (as defined in section 26(b)) plus the tax im-  
 16               posed by section 55, over

17               “(B) the sum of the credits allowable  
 18               under this subpart (other than this section and  
 19               section 23) and section 27 for the taxable year.

20          “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
 21          credit allowable under subsection (a) exceeds the limita-  
 22          tion imposed by subsection (b)(3) for any taxable year,  
 23          such excess shall be carried to the succeeding taxable year  
 24          and added to the credit allowable under subsection (a) for  
 25          such succeeding taxable year.

1       “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-  
 2 MENTS.—For purposes of this section, the term ‘qualified  
 3 energy efficiency improvements’ means any energy effi-  
 4 cient building envelope component which is certified to  
 5 meet or exceed the prescriptive criteria for such compo-  
 6 nent in the 2000 International Energy Conservation Code,  
 7 or any combination of energy efficiency measures which  
 8 are certified as achieving at least a 30 percent reduction  
 9 in heating and cooling energy usage for the dwelling (as  
 10 measured in terms of energy cost to the taxpayer), if—

11               “(1) such component or combination of meas-  
 12 ures is installed in or on a dwelling—

13                       “(A) located in the United States, and

14                       “(B) owned and used by the taxpayer as  
 15 the taxpayer’s principal residence (within the  
 16 meaning of section 121),

17               “(2) the original use of such component or com-  
 18 bination of measures commences with the taxpayer,  
 19 and

20               “(3) such component or combination of meas-  
 21 ures reasonably can be expected to remain in use for  
 22 at least 5 years.

23       “(e) CERTIFICATION.—

24               “(1) METHODS OF CERTIFICATION.—

1           “(A) COMPONENT-BASED METHOD.—The  
 2           certification described in subsection (d) for any  
 3           component described in such subsection shall be  
 4           determined on the basis of applicable energy ef-  
 5           ficiency ratings (including product labeling re-  
 6           quirements) for affected building envelope com-  
 7           ponents.

8           “(B) PERFORMANCE-BASED METHOD.—

9           “(i) IN GENERAL.—The certification  
 10          described in subsection (d) for any com-  
 11          bination of measures described in such  
 12          subsection shall be—

13               “(I) determined by comparing  
 14               the projected heating and cooling en-  
 15               ergy usage for the dwelling to such  
 16               usage for such dwelling in its original  
 17               condition, and

18               “(II) accompanied by a written  
 19               analysis documenting the proper ap-  
 20               plication of a permissible energy per-  
 21               formance calculation method to the  
 22               specific circumstances of such dwell-  
 23               ing.

24           “(ii) COMPUTER SOFTWARE.—Com-  
 25          puter software shall be used in support of



1           a performance-based method certification  
 2           under clause (i). Such software shall meet  
 3           procedures and methods for calculating en-  
 4           ergy and cost savings in regulations pro-  
 5           mulgated by the Secretary of Energy. Such  
 6           regulations on the specifications for soft-  
 7           ware and verification protocols shall be  
 8           based on the 2001 California Residential  
 9           Alternative Calculation Method Approval  
 10          Manual.

11          “(2) PROVIDER.—A certification described in  
 12          subsection (d) shall be provided by—

13               “(A) in the case of the method described  
 14               in paragraph (1)(A), by a third party, such as  
 15               a local building regulatory authority, a utility,  
 16               a manufactured home production inspection pri-  
 17               mary inspection agency (IPIA), or a home en-  
 18               ergy rating organization, or

19               “(B) in the case of the method described  
 20               in paragraph (1)(B), an individual recognized  
 21               by an organization designated by the Secretary  
 22               for such purposes.

23          “(3) FORM.—A certification described in sub-  
 24          section (d) shall be made in writing on forms which  
 25          specify in readily inspectable fashion the energy effi-

1       cient components and other measures and their re-  
 2       spective efficiency ratings, and which include a per-  
 3       manent label affixed to the electrical distribution  
 4       panel of the dwelling.

5           “(4) REGULATIONS.—

6               “(A) IN GENERAL.—In prescribing regula-  
 7       tions under this subsection for certification  
 8       methods described in paragraph (1)(B), the  
 9       Secretary, after examining the requirements for  
 10      energy consultants and home energy ratings  
 11      providers specified by the Mortgage Industry  
 12      National Accreditation Procedures for Home  
 13      Energy Rating Systems, shall prescribe proce-  
 14      dures for calculating annual energy usage and  
 15      cost reductions for heating and cooling and for  
 16      the reporting of the results. Such regulations  
 17      shall—

18               “(i) provide that any calculation pro-  
 19      cedures be fuel neutral such that the same  
 20      energy efficiency measures allow a dwelling  
 21      to be eligible for the credit under this sec-  
 22      tion regardless of whether such dwelling  
 23      uses a gas or oil furnace or boiler or an  
 24      electric heat pump, and

1                   “(ii) require that any computer soft-  
 2                   ware allow for the printing of the Federal  
 3                   tax forms necessary for the credit under  
 4                   this section and for the printing of forms  
 5                   for disclosure to the owner of the dwelling.

6                   “(B) PROVIDERS.—For purposes of para-  
 7                   graph (2)(B), the Secretary shall establish re-  
 8                   quirements for the designation of individuals  
 9                   based on the requirements for energy consult-  
 10                  ants and home energy raters specified by the  
 11                  Mortgage Industry National Accreditation Pro-  
 12                  cedures for Home Energy Rating Systems.

13                  “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
 14                  poses of this section—

15                  “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
 16                  CUPANCY.—In the case of any dwelling unit which is  
 17                  jointly occupied and used during any calendar year  
 18                  as a residence by 2 or more individuals the following  
 19                  shall apply:

20                  “(A) The amount of the credit allowable  
 21                  under subsection (a) by reason of expenditures  
 22                  for the qualified energy efficiency improvements  
 23                  made during such calendar year by any of such  
 24                  individuals with respect to such dwelling unit  
 25                  shall be determined by treating all of such indi-

1           viduals as 1 taxpayer whose taxable year is  
2           such calendar year.

3           “(B) There shall be allowable, with respect  
4           to such expenditures to each of such individ-  
5           uals, a credit under subsection (a) for the tax-  
6           able year in which such calendar year ends in  
7           an amount which bears the same ratio to the  
8           amount determined under subparagraph (A) as  
9           the amount of such expenditures made by such  
10          individual during such calendar year bears to  
11          the aggregate of such expenditures made by all  
12          of such individuals during such calendar year.

13          “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
14          HOUSING CORPORATION.—In the case of an indi-  
15          vidual who is a tenant-stockholder (as defined in sec-  
16          tion 216) in a cooperative housing corporation (as  
17          defined in such section), such individual shall be  
18          treated as having paid his tenant-stockholder’s pro-  
19          portionate share (as defined in section 216(b)(3)) of  
20          the cost of qualified energy efficiency improvements  
21          made by such corporation.

22          “(3) CONDOMINIUMS.—

23                 “(A) IN GENERAL.—In the case of an indi-  
24          vidual who is a member of a condominium man-  
25          agement association with respect to a condo-

minium which the individual owns, such individual shall be treated as having paid the individual's proportionate share of the cost of qualified energy efficiency improvements made by such association.

“(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term ‘condominium management association’ means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

“(4) BUILDING ENVELOPE COMPONENT.—The term ‘building envelope component’ means—

“(A) insulation material or system which is specifically and primarily designed to reduce the heat loss or gain or a dwelling when installed in or on such dwelling, and

“(B) exterior windows (including skylights) and doors.

“(5) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term ‘dwelling’ includes a manufactured home which conforms to Federal

1       Manufactured Home Construction and Safety Stand-  
2       ards (24 CFR 3280).

3       “(g) BASIS ADJUSTMENT.—For purposes of this sub-  
4 title, if a credit is allowed under this section for any ex-  
5 penditure with respect to any property, the increase in the  
6 basis of such property which would (but for this sub-  
7 section) result from such expenditure shall be reduced by  
8 the amount of the credit so allowed.

9       “(h) APPLICATION OF SECTION.—Subsection (a)  
10 shall apply to qualified energy efficiency improvements in-  
11 stalled during the period beginning on the date of the en-  
12 actment of this section and ending on December 31,  
13 2006.”.

14       (b) CONFORMING AMENDMENTS.—

15               (1) Subsection (a) of section 1016, as amended  
16 by this Act, is amended by striking “and” at the end  
17 of paragraph (32), by striking the period at the end  
18 of paragraph (33) and inserting “; and”, and by  
19 adding at the end the following new paragraph:

20               “(34) to the extent provided in section 25D(f),  
21 in the case of amounts with respect to which a credit  
22 has been allowed under section 25D.”.

23               (2) Section 24(b)(3)(B), as amended by this  
24 Act, is amended by striking “and 25C” and insert-  
25 ing “25C, and 25D”.

1           (3) Section 25(e)(1)(C), as amended by this  
2       Act, is amended by inserting “25D,” after “25C,”.

3           (4) Section 25B(g)(2), as amended by this Act,  
4       is amended by striking “23 and 25C” and inserting  
5       “23, 25C, and 25D”.

6           (5) Section 26(a)(1), as amended by this Act,  
7       is amended by striking “and 25C” and inserting  
8       “25C, and 25D”.

9           (6) Section 904(h), as amended by this Act, is  
10      amended by striking “and 25C” and inserting “25C,  
11      and 25D”.

12          (7) Section 1400C(d), as amended by this Act,  
13      is amended by striking “and 25C” and inserting  
14      “25C, and 25D”.

15          (8) The table of sections for subpart A of part  
16      IV of subchapter A of chapter 1, as amended by this  
17      Act, is amended by inserting after the item relating  
18      to section 25C the following new item:

            “Sec. 25D. Energy efficiency improvements to existing homes.”.

19          (c) EFFECTIVE DATE.—The amendments made by  
20      this section shall apply to taxable years ending on or after  
21      the date of the enactment of this Act.

1           **TITLE IV—CLEAN COAL**  
 2                   **INCENTIVES**  
 3   **Subtitle A—Credit for Emission Re-**  
 4       **ductions and Efficiency Im-**  
 5       **provements in Existing Coal-**  
 6       **Based Electricity Generation**  
 7       **Facilities**

8   **SEC. 401. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 9                   **CLEAN COAL TECHNOLOGY UNIT.**

10       (a) CREDIT FOR PRODUCTION FROM A QUALIFYING  
 11   CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV  
 12   of subchapter A of chapter 1 (relating to business related  
 13   credits), as amended by this Act, is amended by adding  
 14   at the end the following new section:

15   **“SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 16                   **CLEAN COAL TECHNOLOGY UNIT.**

17       “(a) GENERAL RULE.—For purposes of section 38,  
 18   the qualifying clean coal technology production credit of  
 19   any taxpayer for any taxable year is equal to the product  
 20   of—

21           “(1) the applicable amount of clean coal tech-  
 22       nology production credit, multiplied by

23           “(2) the applicable percentage of the kilowatt  
 24       hours of electricity produced by the taxpayer during  
 25       such taxable year at a qualifying clean coal tech-



1 nology unit, but only if such production occurs dur-  
2 ing the 10-year period beginning on the date the  
3 unit was returned to service after becoming a quali-  
4 fying clean coal technology unit.

5 “(b) APPLICABLE AMOUNT.—

6 “(1) IN GENERAL.—For purposes of this sec-  
7 tion, the applicable amount of clean coal technology  
8 production credit is equal to \$0.0034.

9 “(2) INFLATION ADJUSTMENT.—For calendar  
10 years after 2003, the applicable amount of clean coal  
11 technology production credit shall be adjusted by  
12 multiplying such amount by the inflation adjustment  
13 factor for the calendar year in which the amount is  
14 applied. If any amount as increased under the pre-  
15 ceding sentence is not a multiple of 0.01 cent, such  
16 amount shall be rounded to the nearest multiple of  
17 0.01 cent.

18 “(c) APPLICABLE PERCENTAGE.—For purposes of  
19 this section, with respect to any qualifying clean coal tech-  
20 nology unit, the applicable percentage is the percentage  
21 equal to the ratio which the portion of the national mega-  
22 watt capacity limitation allocated to the taxpayer with re-  
23 spect to such unit under subsection (e) bears to the total  
24 megawatt capacity of such unit.

1       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
2 poses of this section—

3           “(1) QUALIFYING CLEAN COAL TECHNOLOGY  
4 UNIT.—The term ‘qualifying clean coal technology  
5 unit’ means a clean coal technology unit of the tax-  
6 payer which—

7           “(A) on the date of the enactment of this  
8 section was a coal-based electricity generating  
9 steam generator-turbine unit which was not a  
10 clean coal technology unit,

11           “(B) has a nameplate capacity rating of  
12 not more than 300,000 kilowatts,

13           “(C) becomes a clean coal technology unit  
14 as the result of the retrofitting, repowering, or  
15 replacement of the unit with clean coal tech-  
16 nology during the 10-year period beginning on  
17 the date of the enactment of this section,

18           “(D) is not receiving nor is scheduled to  
19 receive funding under the Clean Coal Tech-  
20 nology Program, the Power Plant Improvement  
21 Initiative, or the Clean Coal Power Initiative  
22 administered by the Secretary of Energy, and

23           “(E) receives an allocation of a portion of  
24 the national megawatt capacity limitation under  
25 subsection (e).

1           “(2) CLEAN COAL TECHNOLOGY UNIT.—The  
 2           term ‘clean coal technology unit’ means a unit  
 3           which—

4                   “(A) uses clean coal technology, including  
 5                   advanced pulverized coal or atmospheric fluid-  
 6                   ized bed combustion, pressurized fluidized bed  
 7                   combustion, integrated gasification combined  
 8                   cycle, or any other technology for the produc-  
 9                   tion of electricity,

10                   “(B) uses coal to produce 75 percent or  
 11                   more of its thermal output as electricity,

12                   “(C) has a design net heat rate of at least  
 13                   500 less than that of such unit as described in  
 14                   paragraph (1)(A),

15                   “(D) has a maximum design net heat rate  
 16                   of not more than 9,500, and

17                   “(E) meets the pollution control require-  
 18                   ments of paragraph (3).

19           “(3) POLLUTION CONTROL REQUIREMENTS.—

20                   “(A) IN GENERAL.—A unit meets the re-  
 21                   quirements of this paragraph if—

22                           “(i) its emissions of sulfur dioxide, ni-  
 23                           trogen oxide, or particulates meet the  
 24                           lower of the emission levels for each such  
 25                           emission specified in—

1 “(I) subparagraph (B), or

2 “(II) the new source performance  
3 standards of the Clean Air Act (42  
4 U.S.C. 7411) which are in effect for  
5 the category of source at the time of  
6 the retrofitting, repowering, or re-  
7 placement of the unit, and

8 “(ii) its emissions do not exceed any  
9 relevant emission level specified by regula-  
10 tion pursuant to the hazardous air pollut-  
11 ant requirements of the Clean Air Act (42  
12 U.S.C. 7412) in effect at the time of the  
13 retrofitting, repowering, or replacement.

14 “(B) SPECIFIC LEVELS.—The levels speci-  
15 fied in this subparagraph are—

16 “(i) in the case of sulfur dioxide emis-  
17 sions, 50 percent of the sulfur dioxide  
18 emission levels specified in the new source  
19 performance standards of the Clean Air  
20 Act (42 U.S.C. 7411) in effect on the date  
21 of the enactment of this section for the  
22 category of source,

23 “(ii) in the case of nitrogen oxide  
24 emissions—

1 “(I) 0.1 pound per million Btu of  
 2 heat input if the unit is not a cyclone-  
 3 fired boiler, and

4 “(II) if the unit is a cyclone-fired  
 5 boiler, 15 percent of the uncontrolled  
 6 nitrogen oxide emissions from such  
 7 boilers, and

8 “(iii) in the case of particulate emis-  
 9 sions, 0.02 pound per million Btu of heat  
 10 input.

11 “(4) DESIGN NET HEAT RATE.—The design net  
 12 heat rate with respect to any unit, measured in Btu  
 13 per kilowatt hour (HHV)—

14 “(A) shall be based on the design annual  
 15 heat input to and the design annual net elec-  
 16 trical output from such unit (determined with-  
 17 out regard to such unit’s co-generation of  
 18 steam),

19 “(B) shall be adjusted for the heat content  
 20 of the design coal to be used by the unit if it  
 21 is less than 12,000 Btu per pound according to  
 22 the following formula:

23 Design net heat rate = Unit net heat rate X [1-  
 24 {((12,000-design coal heat content, Btu per pound)/  
 25 1,000) X 0.013}], and

1           “(C) shall be corrected for the site ref-  
2           erence conditions of—

3           “(i) elevation above sea level of 500 feet,

4           “(ii) air pressure of 14.4 pounds per square  
5           inch absolute (psia),

6           “(iii) temperature, dry bulb of 63°F,

7           “(iv) temperature, wet bulb of 54°F, and

8           “(v) relative humidity of 55 percent.

9           “(5) HHV.—The term ‘HHV’ means higher  
10          heating value.

11          “(6) APPLICATION OF CERTAIN RULES.—The  
12          rules of paragraphs (3), (4), and (5) of section 45(d)  
13          shall apply.

14          “(7) INFLATION ADJUSTMENT FACTOR.—

15                 “(A) IN GENERAL.—The term ‘inflation  
16                 adjustment factor’ means, with respect to a cal-  
17                 endar year, a fraction the numerator of which  
18                 is the GDP implicit price deflator for the pre-  
19                 ceding calendar year and the denominator of  
20                 which is the GDP implicit price deflator for the  
21                 calendar year 2002.

22                 “(B) GDP IMPLICIT PRICE DEFLATOR.—  
23                 The term ‘GDP implicit price deflator’ means  
24                 the most recent revision of the implicit price  
25                 deflator for the gross domestic product as com-

1           puted by the Department of Commerce before  
2           March 15 of the calendar year.

3           “(8) NONCOMPLIANCE WITH POLLUTION  
4           LAWS.—For purposes of this section, a unit which is  
5           not in compliance with the applicable State and Fed-  
6           eral pollution prevention, control, and permit re-  
7           quirements for any period of time shall not be con-  
8           sidered to be a qualifying clean coal technology unit  
9           during such period.

10          “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-  
11          PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY  
12          UNITS.—

13               “(1) IN GENERAL.—For purposes of subsection  
14               (d)(1)(E), the national megawatt capacity limitation  
15               for qualifying clean coal technology units is 4,000  
16               megawatts.

17               “(2) ALLOCATION OF LIMITATION.—The Sec-  
18               retary shall allocate the national megawatt capacity  
19               limitation for qualifying clean coal technology units  
20               in such manner as the Secretary may prescribe  
21               under the regulations under paragraph (3).

22               “(3) REGULATIONS.—Not later than 6 months  
23               after the date of the enactment of this section, the  
24               Secretary shall prescribe such regulations as may be  
25               necessary or appropriate—

1           “(A) to carry out the purposes of this sub-  
2 section,

3           “(B) to limit the capacity of any qualifying  
4 clean coal technology unit to which this section  
5 applies so that the combined megawatt capacity  
6 allocated to all such units under this subsection  
7 when all such units are placed in service during  
8 the 10-year period described in subsection  
9 (d)(1)(C), does not exceed 4,000 megawatts,

10          “(C) to provide a certification process  
11 under which the Secretary, in consultation with  
12 the Secretary of Energy, shall approve and allo-  
13 cate the national megawatt capacity  
14 limitation—

15           “(i) to encourage that units with the  
16 highest thermal efficiencies, when adjusted  
17 for the heat content of the design coal and  
18 site reference conditions described in sub-  
19 section (d)(4)(C), and environmental per-  
20 formance be placed in service as soon as  
21 possible,

22           “(ii) to allocate capacity to taxpayers  
23 that have a definite and credible plan for  
24 placing into commercial operation a quali-



1           fying clean coal technology unit,  
2           including—

3                   “(I) a site,

4                   “(II) contractual commitments  
5                   for procurement and construction or,  
6                   in the case of regulated utilities, the  
7                   agreement of the State utility commis-  
8                   sion,

9                   “(III) filings for all necessary  
10                  preconstruction approvals,

11                  “(IV) a demonstrated record of  
12                  having successfully completed com-  
13                  parable projects on a timely basis, and

14                  “(V) such other factors that the  
15                  Secretary determines are appropriate,

16                  “(D) to allocate the national megawatt ca-  
17                  pacity limitation to a portion of the capacity of  
18                  a qualifying clean coal technology unit if the  
19                  Secretary determines that such an allocation  
20                  would maximize the amount of efficient produc-  
21                  tion encouraged with the available tax credits,

22                  “(E) to set progress requirements and con-  
23                  ditional approvals so that capacity allocations  
24                  for clean coal technology units that become un-  
25                  likely to meet the necessary conditions for

1           qualifying can be reallocated by the Secretary  
2           to other clean coal technology units, and

3                   “(F) to provide taxpayers with opportuni-  
4           ties to correct administrative errors and omis-  
5           sions with respect to allocations and record  
6           keeping within a reasonable period after dis-  
7           covery, taking into account the availability of  
8           regulations and other administrative guidance  
9           from the Secretary.”.

10       (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
11   tion 38(b), as amended by this Act, is amended by striking  
12   “plus” at the end of paragraph (18), by striking the period  
13   at the end of paragraph (19) and inserting “, plus”, and  
14   by adding at the end the following new paragraph:

15                   “(20) the qualifying clean coal technology pro-  
16   duction credit determined under section 45I(a).”.

17       (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
18   transitional rules), as amended by this Act, is amended  
19   by adding at the end the following new paragraph:

20                   “(16) NO CARRYBACK OF SECTION 45I CREDIT  
21   BEFORE EFFECTIVE DATE.—No portion of the un-  
22   used business credit for any taxable year which is  
23   attributable to the qualifying clean coal technology  
24   production credit determined under section 45I may

1 be carried back to a taxable year ending on or before  
 2 the date of the enactment of section 45I.”.

3 (d) CLERICAL AMENDMENT.—The table of sections  
 4 for subpart D of part IV of subchapter A of chapter 1,  
 5 as amended by this Act, is amended by adding at the end  
 6 the following new item:

“Sec. 45I. Credit for production from a qualifying clean coal technology unit.”.

7 (e) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to production after the date of the  
 9 enactment of this Act, in taxable years ending after such  
 10 date.

## 11 **Subtitle B—Incentives for Early** 12 **Commercial Applications of Ad-** 13 **vanced Clean Coal Technologies**

### 14 **SEC. 411. CREDIT FOR INVESTMENT IN QUALIFYING AD-** 15 **VANCED CLEAN COAL TECHNOLOGY.**

16 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN  
 17 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating  
 18 to amount of credit) is amended by striking “and” at the  
 19 end of paragraph (2), by striking the period at the end  
 20 of paragraph (3) and inserting “, and”, and by adding  
 21 at the end the following new paragraph:

22 “(4) the qualifying advanced clean coal tech-  
 23 nology unit credit.”.

24 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN  
 25 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part

1 IV of subchapter A of chapter 1 (relating to rules for com-  
 2 puting investment credit) is amended by inserting after  
 3 section 48 the following new section:

4 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**  
 5 **NOLOGY UNIT CREDIT.**

6 “(a) IN GENERAL.—For purposes of section 46, the  
 7 qualifying advanced clean coal technology unit credit for  
 8 any taxable year is an amount equal to 10 percent of the  
 9 applicable percentage of the qualified investment in a  
 10 qualifying advanced clean coal technology unit for such  
 11 taxable year.

12 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-  
 13 NOLOGY UNIT.—

14 “(1) IN GENERAL.—For purposes of subsection  
 15 (a), the term ‘qualifying advanced clean coal tech-  
 16 nology unit’ means an advanced clean coal tech-  
 17 nology unit of the taxpayer—

18 “(A)(i)(I) in the case of a unit first placed  
 19 in service after the date of the enactment of  
 20 this section, the original use of which com-  
 21 mences with the taxpayer, or

22 “(II) in the case of the retrofitting or  
 23 repowering of a unit first placed in service be-  
 24 fore such date of enactment, the retrofitting or

1 repowering of which is completed by the tax-  
 2 payer after such date, or

3 “(ii) which is acquired through purchase  
 4 (as defined by section 179(d)(2)),

5 “(B) which is depreciable under section  
 6 167,

7 “(C) which has a useful life of not less  
 8 than 4 years,

9 “(D) which is located in the United States,

10 “(E) which is not receiving nor is sched-  
 11 uled to receive funding under the Clean Coal  
 12 Technology Program, the Power Plant Improve-  
 13 ment Initiative, or the Clean Coal Power Initia-  
 14 tive administered by the Secretary of Energy,

15 “(F) which is not a qualifying clean coal  
 16 technology unit, and

17 “(G) which receives an allocation of a por-  
 18 tion of the national megawatt capacity limita-  
 19 tion under subsection (f).

20 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—

21 For purposes of subparagraph (A) of paragraph (1),  
 22 in the case of a unit which—

23 “(A) is originally placed in service by a  
 24 person, and

1           “(B) is sold and leased back by such per-  
 2           son, or is leased to such person, within 3  
 3           months after the date such unit was originally  
 4           placed in service, for a period of not less than  
 5           12 years,

6           such unit shall be treated as originally placed in  
 7           service not earlier than the date on which such unit  
 8           is used under the leaseback (or lease) referred to in  
 9           subparagraph (B). The preceding sentence shall not  
 10          apply to any property if the lessee and lessor of such  
 11          property make an election under this sentence. Such  
 12          an election, once made, may be revoked only with  
 13          the consent of the Secretary.

14          “(3) NONCOMPLIANCE WITH POLLUTION  
 15          LAWS.—For purposes of this subsection, a unit  
 16          which is not in compliance with the applicable State  
 17          and Federal pollution prevention, control, and per-  
 18          mit requirements for any period of time shall not be  
 19          considered to be a qualifying advanced clean coal  
 20          technology unit during such period.

21          “(c) APPLICABLE PERCENTAGE.—For purposes of  
 22          this section, with respect to any qualifying advanced clean  
 23          coal technology unit, the applicable percentage is the per-  
 24          centage equal to the ratio which the portion of the national  
 25          megawatt capacity limitation allocated to the taxpayer

1 with respect to such unit under subsection (f) bears to  
 2 the total megawatt capacity of such unit.

3 “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—  
 4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘advanced clean  
 6 coal technology unit’ means a new, retrofit, or  
 7 repowering unit of the taxpayer which—

8 “(A) is—

9 “(i) an eligible advanced pulverized  
 10 coal or atmospheric fluidized bed combus-  
 11 tion technology unit,

12 “(ii) an eligible pressurized fluidized  
 13 bed combustion technology unit,

14 “(iii) an eligible integrated gasifi-  
 15 cation combined cycle technology unit, or

16 “(iv) an eligible other technology unit,  
 17 and

18 “(B) meets the carbon emission rate re-  
 19 quirements of paragraph (6).

20 “(2) ELIGIBLE ADVANCED PULVERIZED COAL  
 21 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION  
 22 TECHNOLOGY UNIT.—The term ‘eligible advanced  
 23 pulverized coal or atmospheric fluidized bed combus-  
 24 tion technology unit’ means a clean coal technology

1 unit using advanced pulverized coal or atmospheric  
2 fluidized bed combustion technology which—

3 “(A) is placed in service after the date of  
4 the enactment of this section and before Janu-  
5 ary 1, 2013, and

6 “(B) has a design net heat rate of not  
7 more than 8,350 (8,750 in the case of units  
8 placed in service before 2009).

9 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED  
10 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-  
11 ble pressurized fluidized bed combustion technology  
12 unit’ means a clean coal technology unit using pres-  
13 surized fluidized bed combustion technology which—

14 “(A) is placed in service after the date of  
15 the enactment of this section and before Janu-  
16 ary 1, 2017, and

17 “(B) has a design net heat rate of not  
18 more than 7,720 (8,750 in the case of units  
19 placed in service before 2009, and 8,350 in the  
20 case of units placed in service after 2008 and  
21 before 2013).

22 “(4) ELIGIBLE INTEGRATED GASIFICATION  
23 COMBINED CYCLE TECHNOLOGY UNIT.—The term  
24 ‘eligible integrated gasification combined cycle tech-  
25 nology unit’ means a clean coal technology unit



1 using integrated gasification combined cycle tech-  
2 nology, with or without fuel or chemical co-produc-  
3 tion, which—

4 “(A) is placed in service after the date of  
5 the enactment of this section and before Janu-  
6 ary 1, 2017,

7 “(B) has a design net heat rate of not  
8 more than 7,720 (8,750 in the case of units  
9 placed in service before 2009, and 8,350 in the  
10 case of units placed in service after 2008 and  
11 before 2013), and

12 “(C) has a net thermal efficiency (HHV)  
13 using coal with fuel or chemical co-production  
14 of not less than 43.9 percent (39 percent in the  
15 case of units placed in service before 2009, and  
16 40.9 percent in the case of units placed in serv-  
17 ice after 2008 and before 2013).

18 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—

19 The term ‘eligible other technology unit’ means a  
20 clean coal technology unit using any other tech-  
21 nology for the production of electricity which is  
22 placed in service after the date of the enactment of  
23 this section and before January 1, 2017.

24 “(6) CARBON EMISSION RATE REQUIRE-  
25 MENTS.—

1           “(A) IN GENERAL.—Except as provided in  
 2           subparagraph (B), a unit meets the require-  
 3           ments of this paragraph if—

4                   “(i) in the case of a unit using design  
 5                   coal with a heat content of not more than  
 6                   9,000 Btu per pound, the carbon emission  
 7                   rate is less than 0.60 pound of carbon per  
 8                   kilowatt hour, and

9                   “(ii) in the case of a unit using design  
 10                  coal with a heat content of more than  
 11                  9,000 Btu per pound, the carbon emission  
 12                  rate is less than 0.54 pound of carbon per  
 13                  kilowatt hour.

14           “(B) ELIGIBLE OTHER TECHNOLOGY  
 15           UNIT.—In the case of an eligible other tech-  
 16           nology unit, subparagraph (A) shall be applied  
 17           by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and  
 18           ‘0.54’, respectively.

19           “(e) GENERAL DEFINITIONS.—Any term used in this  
 20           section which is also used in section 45I shall have the  
 21           meaning given such term in section 45I.

22           “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-  
 23           PACITY OF ADVANCED CLEAN COAL TECHNOLOGY  
 24           UNITS.—

1           “(1) IN GENERAL.—For purposes of subsection  
2           (b)(1)(G), the national megawatt capacity limitation  
3           is—

4                   “(A) for qualifying advanced clean coal  
5                   technology units using advanced pulverized coal  
6                   or atmospheric fluidized bed combustion tech-  
7                   nology, not more than 1,000 megawatts (not  
8                   more than 500 megawatts in the case of units  
9                   placed in service before 2009),

10                   “(B) for such units using pressurized flu-  
11                   idized bed combustion technology, not more  
12                   than 500 megawatts (not more than 250  
13                   megawatts in the case of units placed in service  
14                   before 2009),

15                   “(C) for such units using integrated gasifi-  
16                   cation combined cycle technology, with or with-  
17                   out fuel or chemical co-production, not more  
18                   than 2,000 megawatts (not more than 1,000  
19                   megawatts in the case of units placed in service  
20                   before 2009 and not more than 1,500  
21                   megawatts in the case of units placed in service  
22                   after 2008 and before 2013), and

23                   “(D) for such units using other technology  
24                   for the production of electricity, not more than  
25                   500 megawatts (not more than 250 megawatts

1 in the case of units placed in service before  
2 2009).

3 “(2) ALLOCATION OF LIMITATION.—The Sec-  
4 retary shall allocate the national megawatt capacity  
5 limitation for qualifying advanced clean coal tech-  
6 nology units in such manner as the Secretary may  
7 prescribe under the regulations under paragraph (3).

8 “(3) REGULATIONS.—Not later than 6 months  
9 after the date of the enactment of this section, the  
10 Secretary shall prescribe such regulations as may be  
11 necessary or appropriate—

12 “(A) to carry out the purposes of this sub-  
13 section and section 45J,

14 “(B) to limit the capacity of any qualifying  
15 advanced clean coal technology unit to which  
16 this section applies so that the combined mega-  
17 watt capacity of all such units to which this sec-  
18 tion applies does not exceed 4,000 megawatts,

19 “(C) to provide a certification process de-  
20 scribed in section 45I(e)(3)(C),

21 “(D) to carry out the purposes described  
22 in subparagraphs (D), (E), and (F) of section  
23 45I(e)(3), and

24 “(E) to reallocate capacity which is not al-  
25 located to any technology described in subpara-

graphs (A) through (D) of paragraph (1) because an insufficient number of qualifying units request an allocation for such technology, to another technology described in such subparagraphs in order to maximize the amount of energy efficient production encouraged with the available tax credits.

“(4) SELECTION CRITERIA.—For purposes of paragraph (3)(C), the selection criteria for allocating the national megawatt capacity limitation to qualifying advanced clean coal technology units—

“(A) shall be established by the Secretary of Energy as part of a competitive solicitation,

“(B) shall include primary criteria of minimum design net heat rate, maximum design thermal efficiency, environmental performance, and lowest cost to the Government, and

“(C) shall include supplemental criteria as determined appropriate by the Secretary of Energy.

“(g) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term ‘qualified investment’ means, with respect to any taxable year, the basis of a qualifying advanced clean coal technology unit placed in service by the taxpayer during such taxable year (in the case of a unit

1 described in subsection (b)(1)(A)(i)(II), only that portion  
 2 of the basis of such unit which is properly attributable  
 3 to the retrofitting or repowering of such unit).

4 “(h) QUALIFIED PROGRESS EXPENDITURES.—

5 “(1) INCREASE IN QUALIFIED INVESTMENT.—

6 In the case of a taxpayer who has made an election  
 7 under paragraph (5), the amount of the qualified in-  
 8 vestment of such taxpayer for the taxable year (de-  
 9 termined under subsection (g) without regard to this  
 10 subsection) shall be increased by an amount equal to  
 11 the aggregate of each qualified progress expenditure  
 12 for the taxable year with respect to progress expend-  
 13 iture property.

14 “(2) PROGRESS EXPENDITURE PROPERTY DE-  
 15 FINED.—For purposes of this subsection, the term  
 16 ‘progress expenditure property’ means any property  
 17 being constructed by or for the taxpayer and which  
 18 it is reasonable to believe will qualify as a qualifying  
 19 advanced clean coal technology unit which is being  
 20 constructed by or for the taxpayer when it is placed  
 21 in service.

22 “(3) QUALIFIED PROGRESS EXPENDITURES DE-  
 23 FINED.—For purposes of this subsection—

24 “(A) SELF-CONSTRUCTED PROPERTY.—In  
 25 the case of any self-constructed property, the

term ‘qualified progress expenditures’ means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

“(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term ‘qualified progress expenditures’ means the amount paid during the taxable year to another person for the construction of such property.

“(4) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) SELF-CONSTRUCTED PROPERTY.—The term ‘self-constructed property’ means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

“(B) NONSELF-CONSTRUCTED PROPERTY.—The term ‘nonself-constructed property’ means property which is not self-constructed property.

“(C) CONSTRUCTION, ETC.—The term ‘construction’ includes reconstruction and erec-

1           tion, and the term ‘constructed’ includes recon-  
2           structed and erected.

3           “(D) ONLY CONSTRUCTION OF QUALI-  
4           FYING ADVANCED CLEAN COAL TECHNOLOGY  
5           UNIT TO BE TAKEN INTO ACCOUNT.—Construc-  
6           tion shall be taken into account only if, for pur-  
7           poses of this subpart, expenditures therefor are  
8           properly chargeable to capital account with re-  
9           spect to the property.

10          “(5) ELECTION.—An election under this sub-  
11          section may be made at such time and in such man-  
12          ner as the Secretary may by regulations prescribe.  
13          Such an election shall apply to the taxable year for  
14          which made and to all subsequent taxable years.  
15          Such an election, once made, may not be revoked ex-  
16          cept with the consent of the Secretary.

17          “(i) COORDINATION WITH OTHER CREDITS.—This  
18          section shall not apply to any property with respect to  
19          which the rehabilitation credit under section 47 or the en-  
20          ergy credit under section 48 is allowed unless the taxpayer  
21          elects to waive the application of such credit to such prop-  
22          erty.”.

23          (c) RECAPTURE.—Section 50(a) (relating to other  
24          special rules) is amended by adding at the end the fol-  
25          lowing new paragraph:



1           “(6) SPECIAL RULES RELATING TO QUALIFYING  
2       ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For  
3       purposes of applying this subsection in the case of  
4       any credit allowable by reason of section 48A, the  
5       following shall apply:

6           “(A) GENERAL RULE.—In lieu of the  
7       amount of the increase in tax under paragraph  
8       (1), the increase in tax shall be an amount  
9       equal to the investment tax credit allowed under  
10      section 38 for all prior taxable years with re-  
11      spect to a qualifying advanced clean coal tech-  
12      nology unit (as defined by section 48A(b)(1))  
13      multiplied by a fraction whose numerator is the  
14      number of years remaining to fully depreciate  
15      under this title the qualifying advanced clean  
16      coal technology unit disposed of, and whose de-  
17      nominator is the total number of years over  
18      which such unit would otherwise have been sub-  
19      ject to depreciation. For purposes of the pre-  
20      ceding sentence, the year of disposition of the  
21      qualifying advanced clean coal technology unit  
22      shall be treated as a year of remaining depre-  
23      ciation.

24           “(B) PROPERTY CEASES TO QUALIFY FOR  
25      PROGRESS EXPENDITURES.—Rules similar to

the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a qualifying advanced clean coal technology unit under section 48A, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted for the amount described in such paragraph (2).

“(C) APPLICATION OF PARAGRAPH.—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a qualifying advanced clean coal technology unit.”.

(d) TRANSITIONAL RULE.—Section 39(d) (relating to transitional rules), as amended by this Act, is amended by adding at the end the following new paragraph:

“(17) NO CARRYBACK OF SECTION 48A CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the qualifying advanced clean coal technology unit credit determined under section 48A may be carried back to a taxable year ending on or before the date of the enactment of section 48A.”.

(e) TECHNICAL AMENDMENTS.—

(1) Section 49(a)(1)(C) is amended by striking “and” at the end of clause (ii), by striking the pe-

1 riod at the end of clause (iii) and inserting “, and”,  
 2 and by adding at the end the following new clause:

3 “(iv) the portion of the basis of any  
 4 qualifying advanced clean coal technology  
 5 unit attributable to any qualified invest-  
 6 ment (as defined by section 48A(g)).”.

7 (2) Section 50(a)(4) is amended by striking  
 8 “and (2)” and inserting “(2), and (6)”.

9 (3) Section 50(c) is amended by adding at the  
 10 end the following new paragraph:

11 “(6) NONAPPLICATION.—Paragraphs (1) and  
 12 (2) shall not apply to any qualifying advanced clean  
 13 coal technology unit credit under section 48A.”.

14 (4) The table of sections for subpart E of part  
 15 IV of subchapter A of chapter 1 is amended by in-  
 16 serting after the item relating to section 48 the fol-  
 17 lowing new item:

“Sec. 48A. Qualifying advanced clean coal technology unit credit.”.

18 (f) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to periods after the date of the  
 20 enactment of this Act, under rules similar to the rules of  
 21 section 48(m) of the Internal Revenue Code of 1986 (as  
 22 in effect on the day before the date of the enactment of  
 23 the Revenue Reconciliation Act of 1990).

1 **SEC. 412. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 (relating to business related cred-  
 5 its), as amended by this Act, is amended by adding at  
 6 the end the following new section:

7 **“SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 8 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

9 “(a) GENERAL RULE.—For purposes of section 38,  
 10 the qualifying advanced clean coal technology production  
 11 credit of any taxpayer for any taxable year is equal to—

12 “(1) the applicable amount of advanced clean  
 13 coal technology production credit, multiplied by

14 “(2) the applicable percentage (as determined  
 15 under section 48A(c)) of the sum of—

16 “(A) the kilowatt hours of electricity, plus

17 “(B) each 3,413 Btu of fuels or chemicals,  
 18 produced by the taxpayer during such taxable year  
 19 at a qualifying advanced clean coal technology unit  
 20 during the 10-year period beginning on the date the  
 21 unit was originally placed in service (or returned to  
 22 service after becoming a qualifying advanced clean  
 23 coal technology unit).

24 “(b) APPLICABLE AMOUNT.—For purposes of this  
 25 section, the applicable amount of advanced clean coal tech-  
 26 nology production credit with respect to production from

1 a qualifying advanced clean coal technology unit shall be  
 2 determined as follows:

3 “(1) Where the qualifying advanced clean coal  
 4 technology unit is producing electricity only:

5 “(A) In the case of a unit originally placed  
 6 in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,400 .....	\$.0060	\$.0038
More than 8,400 but not more than 8,550 .....	\$.0025	\$.0010
More than 8,550 but less than 8,750 .....	\$.0010	\$.0010.

7 “(B) In the case of a unit originally placed  
 8 in service after 2008 and before 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770 .....	\$.0105	\$.0090
More than 7,770 but not more than 8,125 .....	\$.0085	\$.0068
More than 8,125 but less than 8,350 .....	\$.0075	\$.0055.

9 “(C) In the case of a unit originally placed  
 10 in service after 2012 and before 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380 .....	\$.0140	\$.0115
More than 7,380 but not more than 7,720 .....	\$.0120	\$.0090.

11 “(2) Where the qualifying advanced clean coal  
 12 technology unit is producing fuel or chemicals:

13 “(A) In the case of a unit originally placed  
 14 in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent .....	\$.0060	\$.0038
Less than 40.6 but not less than 40 percent .....	\$.0025	\$.0010
Less than 40 but not less than 39 percent .....	\$.0010	\$.0010.

1 “(B) In the case of a unit originally placed  
2 in service after 2008 and before 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.6 percent .....	\$.0105	\$.0090
Less than 43.6 but not less than 42 percent .....	\$.0085	\$.0068
Less than 42 but not less than 40.9 percent .....	\$.0075	\$.0055.

3 “(C) In the case of a unit originally placed  
4 in service after 2012 and before 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent .....	\$.0140	\$.0115
Less than 44.2 but not less than 43.9 percent .....	\$.0120	\$.0090.

5 “(c) INFLATION ADJUSTMENT.—For calendar years  
6 after 2003, each amount in paragraphs (1) and (2) of sub-  
7 section (b) shall be adjusted by multiplying such amount  
8 by the inflation adjustment factor for the calendar year  
9 in which the amount is applied. If any amount as in-  
10 creased under the preceding sentence is not a multiple of  
11 0.01 cent, such amount shall be rounded to the nearest  
12 multiple of 0.01 cent.

13 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
14 poses of this section—

1           “(1) IN GENERAL.—Any term used in this sec-  
 2           tion which is also used in section 45I or 48A shall  
 3           have the meaning given such term in such section.

4           “(2) APPLICABLE RULES.—The rules of para-  
 5           graphs (3), (4), and (5) of section 45(d) shall  
 6           apply.”.

7           (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 8           tion 38(b), as amended by this Act, is amended by striking  
 9           “plus” at the end of paragraph (19), by striking the period  
 10          at the end of paragraph (20) and inserting “, plus”, and  
 11          by adding at the end the following new paragraph:

12           “(21) the qualifying advanced clean coal tech-  
 13          nology production credit determined under section  
 14          45J(a).”.

15          (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
 16          transitional rules), as amended by this Act, is amended  
 17          by adding at the end the following new paragraph:

18           “(18) NO CARRYBACK OF SECTION 45J CREDIT  
 19          BEFORE EFFECTIVE DATE.—No portion of the un-  
 20          used business credit for any taxable year which is  
 21          attributable to the qualifying advanced clean coal  
 22          technology production credit determined under sec-  
 23          tion 45J may be carried back to a taxable year end-  
 24          ing on or before the date of the enactment of section  
 25          45J.”.

1 (d) DENIAL OF DOUBLE BENEFIT.—Section 29(d)  
 2 (relating to other definitions and special rules) is amended  
 3 by adding at the end the following new paragraph:

4 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-  
 5 tion shall not apply with respect to any qualified fuel  
 6 the production of which may be taken into account  
 7 for purposes of determining the credit under section  
 8 45J.”.

9 (e) CLERICAL AMENDMENT.—The table of sections  
 10 for subpart D of part IV of subchapter A of chapter 1,  
 11 as amended by this Act, is amended by adding at the end  
 12 the following new item:

“Sec. 45J. Credit for production from a qualifying advanced clean coal tech-  
 nology unit.”.

13 (f) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to production after the date of the  
 15 enactment of this Act, in taxable years ending after such  
 16 date.

## 17 **Subtitle C—Treatment of Persons**

### 18 **Not Able To Use Entire Credit**

#### 19 **SEC. 421. TREATMENT OF PERSONS NOT ABLE TO USE EN-**

#### 20 **TIRE CREDIT.**

21 (a) IN GENERAL.—Section 45I, as added by this Act,  
 22 is amended by adding at the end the following new sub-  
 23 section:



1       “(f) TREATMENT OF PERSON NOT ABLE TO USE  
2 ENTIRE CREDIT.—

3               “(1) ALLOWANCE OF CREDITS.—

4                       “(A) IN GENERAL.—Any credit allowable  
5 under this section, section 45J, or section 48A  
6 with respect to a facility owned by a person de-  
7 scribed in subparagraph (B) may be transferred  
8 or used as provided in this subsection, and the  
9 determination as to whether the credit is allow-  
10 able shall be made without regard to the tax-  
11 exempt status of the person.

12                      “(B) PERSONS DESCRIBED.—A person is  
13 described in this subparagraph if the person  
14 is—

15                               “(i) an organization described in sec-  
16 tion 501(c)(12)(C) and exempt from tax  
17 under section 501(a),

18                               “(ii) an organization described in sec-  
19 tion 1381(a)(2)(C),

20                               “(iii) a public utility (as defined in  
21 section 136(c)(2)(B)),

22                               “(iv) any State or political subdivision  
23 thereof, the District of Columbia, or any  
24 agency or instrumentality of any of the  
25 foregoing,

1 “(v) any Indian tribal government  
2 (within the meaning of section 7871) or  
3 any agency or instrumentality thereof, or

4 “(vi) the Tennessee Valley Authority.

5 “(2) TRANSFER OF CREDIT.—

6 “(A) IN GENERAL.—A person described in  
7 clause (i), (ii), (iii), (iv), or (v) of paragraph  
8 (1)(B) may transfer any credit to which para-  
9 graph (1)(A) applies through an assignment to  
10 any other person not described in paragraph  
11 (1)(B). Such transfer may be revoked only with  
12 the consent of the Secretary.

13 “(B) REGULATIONS.—The Secretary shall  
14 prescribe such regulations as necessary to in-  
15 sure that any credit described in subparagraph  
16 (A) is claimed once and not reassigned by such  
17 other person.

18 “(C) TRANSFER PROCEEDS TREATED AS  
19 ARISING FROM ESSENTIAL GOVERNMENT FUNC-  
20 TION.—Any proceeds derived by a person de-  
21 scribed in clause (iii), (iv), or (v) of paragraph  
22 (1)(B) from the transfer of any credit under  
23 subparagraph (A) shall be treated as arising  
24 from the exercise of an essential government  
25 function.

1           “(3) USE OF CREDIT AS AN OFFSET.—Notwith-  
 2           standing any other provision of law, in the case of  
 3           a person described in clause (i), (ii), or (v) of para-  
 4           graph (1)(B), any credit to which paragraph (1)(A)  
 5           applies may be applied by such person, to the extent  
 6           provided by the Secretary of Agriculture, as a pre-  
 7           payment of any loan, debt, or other obligation the  
 8           entity has incurred under subchapter I of chapter 31  
 9           of title 7 of the Rural Electrification Act of 1936 (7  
 10          U.S.C. 901 et seq.), as in effect on the date of the  
 11          enactment of this section.

12           “(4) USE BY TVA.—

13           “(A) IN GENERAL.—Notwithstanding any  
 14           other provision of law, in the case of a person  
 15           described in paragraph (1)(B)(vi), any credit to  
 16           which paragraph (1)(A) applies may be applied  
 17           as a credit against the payments required to be  
 18           made in any fiscal year under section 15d(e) of  
 19           the Tennessee Valley Authority Act of 1933 (16  
 20           U.S.C. 831n–4(e)) as an annual return on the  
 21           appropriations investment and an annual repay-  
 22           ment sum.

23           “(B) TREATMENT OF CREDITS.—The ag-  
 24           gregate amount of credits described in para-  
 25           graph (1)(A) with respect to such person shall

1           be treated in the same manner and to the same  
 2           extent as if such credits were a payment in cash  
 3           and shall be applied first against the annual re-  
 4           turn on the appropriations investment.

5           “(C) CREDIT CARRYOVER.—With respect  
 6           to any fiscal year, if the aggregate amount of  
 7           credits described in paragraph (1)(A) with re-  
 8           spect to such person exceeds the aggregate  
 9           amount of payment obligations described in  
 10          subparagraph (A), the excess amount shall re-  
 11          main available for application as credits against  
 12          the amounts of such payment obligations in  
 13          succeeding fiscal years in the same manner as  
 14          described in this paragraph.

15          “(5) CREDIT NOT INCOME.—Any transfer  
 16          under paragraph (2) or use under paragraph (3) of  
 17          any credit to which paragraph (1)(A) applies shall  
 18          not be treated as income for purposes of section  
 19          501(c)(12).

20          “(6) TREATMENT OF UNRELATED PERSONS.—  
 21          For purposes of this subsection, sales among and be-  
 22          tween persons described in clauses (i), (ii), (iii), (iv),  
 23          and (v) of paragraph (1)(A) shall be treated as sales  
 24          between unrelated parties.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to production after the date of the  
 3 enactment of this Act, in taxable years ending after such  
 4 date.

## 5 **TITLE V—OIL AND GAS** 6 **PROVISIONS**

### 7 **SEC. 501. OIL AND GAS FROM MARGINAL WELLS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-  
 9 chapter A of chapter 1 (relating to business credits), as  
 10 amended by this Act, is amended by adding at the end  
 11 the following new section:

#### 12 **“SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM** 13 **MARGINAL WELLS.**

14 “(a) GENERAL RULE.—For purposes of section 38,  
 15 the marginal well production credit for any taxable year  
 16 is an amount equal to the product of—

17 “(1) the credit amount, and

18 “(2) the qualified credit oil production and the  
 19 qualified natural gas production which is attrib-  
 20 utable to the taxpayer.

21 “(b) CREDIT AMOUNT.—For purposes of this  
 22 section—

23 “(1) IN GENERAL.—The credit amount is—

24 “(A) \$3 per barrel of qualified crude oil  
 25 production, and

1           “(B) 50 cents per 1,000 cubic feet of  
2           qualified natural gas production.

3           “(2) REDUCTION AS OIL AND GAS PRICES IN-  
4           CREASE.—

5           “(A) IN GENERAL.—The \$3 and 50 cents  
6           amounts under paragraph (1) shall each be re-  
7           duced (but not below zero) by an amount which  
8           bears the same ratio to such amount (deter-  
9           mined without regard to this paragraph) as—

10           “(i) the excess (if any) of the applica-  
11           ble reference price over \$15 (\$1.67 for  
12           qualified natural gas production), bears to

13           “(ii) \$3 (\$0.33 for qualified natural  
14           gas production).

15           The applicable reference price for a taxable  
16           year is the reference price of the calendar year  
17           preceding the calendar year in which the tax-  
18           able year begins.

19           “(B) INFLATION ADJUSTMENT.—In the  
20           case of any taxable year beginning in a calendar  
21           year after 2002, each of the dollar amounts  
22           contained in subparagraph (A) shall be in-  
23           creased to an amount equal to such dollar  
24           amount multiplied by the inflation adjustment  
25           factor for such calendar year (determined under

1 section 43(b)(3)(B) by substituting ‘2001’ for  
2 ‘1990’).

3 “(C) REFERENCE PRICE.—For purposes of  
4 this paragraph, the term ‘reference price’  
5 means, with respect to any calendar year—

6 “(i) in the case of qualified crude oil  
7 production, the reference price determined  
8 under section 29(d)(2)(C), and

9 “(ii) in the case of qualified natural  
10 gas production, the Secretary’s estimate of  
11 the annual average wellhead price per  
12 1,000 cubic feet for all domestic natural  
13 gas.

14 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS  
15 PRODUCTION.—For purposes of this section—

16 “(1) IN GENERAL.—The terms ‘qualified crude  
17 oil production’ and ‘qualified natural gas production’  
18 mean domestic crude oil or natural gas which is pro-  
19 duced from a qualified marginal well.

20 “(2) LIMITATION ON AMOUNT OF PRODUCTION  
21 WHICH MAY QUALIFY.—

22 “(A) IN GENERAL.—Crude oil or natural  
23 gas produced during any taxable year from any  
24 well shall not be treated as qualified crude oil  
25 production or qualified natural gas production

1 to the extent production from the well during  
2 the taxable year exceeds 1,095 barrels or barrel  
3 equivalents.

4 “(B) PROPORTIONATE REDUCTIONS.—

5 “(i) SHORT TAXABLE YEARS.—In the  
6 case of a short taxable year, the limitations  
7 under this paragraph shall be proportion-  
8 ately reduced to reflect the ratio which the  
9 number of days in such taxable year bears  
10 to 365.

11 “(ii) WELLS NOT IN PRODUCTION EN-  
12 TIRE YEAR.—In the case of a well which is  
13 not capable of production during each day  
14 of a taxable year, the limitations under  
15 this paragraph applicable to the well shall  
16 be proportionately reduced to reflect the  
17 ratio which the number of days of produc-  
18 tion bears to the total number of days in  
19 the taxable year.

20 “(3) DEFINITIONS.—

21 “(A) QUALIFIED MARGINAL WELL.—The  
22 term ‘qualified marginal well’ means a domestic  
23 well—



1 “(i) the production from which during  
 2 the taxable year is treated as marginal  
 3 production under section 613A(c)(6), or

4 “(ii) which, during the taxable year—

5 “(I) has average daily production  
 6 of not more than 25 barrel equiva-  
 7 lents, and

8 “(II) produces water at a rate  
 9 not less than 95 percent of total well  
 10 effluent.

11 “(B) CRUDE OIL, ETC.—The terms ‘crude  
 12 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have  
 13 the meanings given such terms by section  
 14 613A(e).

15 “(C) BARREL EQUIVALENT.—The term  
 16 ‘barrel equivalent’ means, with respect to nat-  
 17 ural gas, a conversion ratio of 6,000 cubic  
 18 feet of natural gas to 1 barrel of crude oil.

19 “(d) OTHER RULES.—

20 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
 21 PAYER.—In the case of a qualified marginal well in  
 22 which there is more than one owner of operating in-  
 23 terests in the well and the crude oil or natural gas  
 24 production exceeds the limitation under subsection  
 25 (c)(2), qualifying crude oil production or qualifying

1 natural gas production attributable to the taxpayer  
2 shall be determined on the basis of the ratio which  
3 taxpayer's revenue interest in the production bears  
4 to the aggregate of the revenue interests of all oper-  
5 ating interest owners in the production.

6 “(2) OPERATING INTEREST REQUIRED.—Any  
7 credit under this section may be claimed only on  
8 production which is attributable to the holder of an  
9 operating interest.

10 “(3) PRODUCTION FROM NONCONVENTIONAL  
11 SOURCES EXCLUDED.—In the case of production  
12 from a qualified marginal well which is eligible for  
13 the credit allowed under section 29 for the taxable  
14 year, no credit shall be allowable under this section  
15 unless the taxpayer elects not to claim the credit  
16 under section 29 with respect to the well.

17 “(4) NONCOMPLIANCE WITH POLLUTION  
18 LAWS.—For purposes of subsection (c)(3)(A), a  
19 marginal well which is not in compliance with the  
20 applicable State and Federal pollution prevention,  
21 control, and permit requirements for any period of  
22 time shall not be considered to be a qualified mar-  
23 ginal well during such period.”.

24 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
25 tion 38(b), as amended by this Act, is amended by striking

1 “plus” at the end of paragraph (20), by striking the period  
 2 at the end of paragraph (21) and inserting “, plus”, and  
 3 by adding at the end the following new paragraph:

4 “(22) the marginal oil and gas well production  
 5 credit determined under section 45K(a).”.

6 (c) NO CARRYBACK OF MARGINAL OIL AND GAS  
 7 WELL PRODUCTION CREDIT BEFORE EFFECTIVE  
 8 DATE.—Subsection (d) of section 39, as amended by this  
 9 Act, is amended by adding at the end the following new  
 10 paragraph:

11 “(19) NO CARRYBACK OF MARGINAL OIL AND  
 12 GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE  
 13 DATE.—No portion of the unused business credit for  
 14 any taxable year which is attributable to the mar-  
 15 ginal oil and gas well production credit determined  
 16 under section 45K may be carried back to a taxable  
 17 year ending on or before the date of the enactment  
 18 of section 45K.”.

19 (d) COORDINATION WITH SECTION 29.—Section  
 20 29(a) is amended by striking “There” and inserting “At  
 21 the election of the taxpayer, there”.

22 (e) CLERICAL AMENDMENT.—The table of sections  
 23 for subpart D of part IV of subchapter A of chapter 1,  
 24 as amended by this Act, is amended by adding at the end  
 25 the following new item:

“Sec. 45K. Credit for producing oil and gas from marginal wells.”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to production in taxable years be-  
3 ginning after the date of the enactment of this Act.

4 **SEC. 502. NATURAL GAS GATHERING LINES TREATED AS 7-**  
5 **YEAR PROPERTY.**

6 (a) IN GENERAL.—Subparagraph (C) of section  
7 168(e)(3) (relating to classification of certain property) is  
8 amended by striking “and” at the end of clause (i), by  
9 redesignating clause (ii) as clause (iii), and by inserting  
10 after clause (i) the following new clause:

11 “(ii) any natural gas gathering line,  
12 and”.

13 (b) NATURAL GAS GATHERING LINE.—Subsection (i)  
14 of section 168, as amended by this Act, is amended by  
15 adding at the end the following new paragraph:

16 “(16) NATURAL GAS GATHERING LINE.—The  
17 term ‘natural gas gathering line’ means—

18 “(A) the pipe, equipment, and appur-  
19 tenances determined to be a gathering line by  
20 the Federal Energy Regulatory Commission, or

21 “(B) the pipe, equipment, and appur-  
22 tenances used to deliver natural gas from the  
23 wellhead or a commonpoint to the point at  
24 which such gas first reaches—

1 “(i) a gas processing plant,

2 “(ii) an interconnection with a trans-  
3 mission pipeline certificated by the Federal  
4 Energy Regulatory Commission as an  
5 interstate transmission pipeline,

6 “(iii) an interconnection with an  
7 intrastate transmission pipeline, or

8 “(iv) a direct interconnection with a  
9 local distribution company, a gas storage  
10 facility, or an industrial consumer.”.

11 (c) ALTERNATIVE SYSTEM.—The table contained in  
12 section 168(g)(3)(B) is amended by inserting after the  
13 item relating to subparagraph (C)(i) the following new  
14 item:

“(C)(ii) ..... 10”.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to property placed in service after  
17 the date of the enactment of this Act, in taxable years  
18 ending after such date.

19 **SEC. 503. REPEAL OF REQUIREMENT OF CERTAIN AP-**  
20 **PROVED TERMINALS TO OFFER DYED DIESEL**  
21 **FUEL AND KEROSENE FOR NONTAXABLE**  
22 **PURPOSES.**

23 (a) IN GENERAL.—Section 4101 (relating to certain  
24 approved terminals of registered persons required to offer

1 dyed diesel fuel and kerosene for nontaxable purposes) is  
 2 amended by striking subsection (e).

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall take effect on January 1, 2002.

5 **SEC. 504. EXPENSING OF CAPITAL COSTS INCURRED IN**  
 6 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 7 **TION AGENCY SULFUR REGULATIONS.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 9 ter 1 (relating to itemized deductions for individuals and  
 10 corporations), as amended by this Act, is amended by in-  
 11 serting after section 179C the following new section:

12 **“SEC. 179D. DEDUCTION FOR CAPITAL COSTS INCURRED IN**  
 13 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 14 **TION AGENCY SULFUR REGULATIONS.**

15 “(a) TREATMENT AS EXPENSE.—

16 “(1) IN GENERAL.—A small business refiner  
 17 may elect to treat any qualified capital costs as an  
 18 expense which is not chargeable to capital account.  
 19 Any qualified cost which is so treated shall be al-  
 20 lowed as a deduction for the taxable year in which  
 21 the cost is paid or incurred.

22 “(2) LIMITATION.—

23 “(A) IN GENERAL.—The aggregate costs  
 24 which may be taken into account under this  
 25 subsection for any taxable year may not exceed

1           the applicable percentage of the qualified cap-  
2           ital costs paid or incurred for the taxable year.

3           “(B) APPLICABLE PERCENTAGE.—For  
4           purposes of subparagraph (A)—

5           “(i) IN GENERAL.—Except as pro-  
6           vided in clause (ii), the applicable percent-  
7           age is 75 percent.

8           “(ii) REDUCED PERCENTAGE.—In the  
9           case of a small business refiner with aver-  
10          age daily refinery runs for the period de-  
11          scribed in subsection (b)(2) in excess of  
12          155,000 barrels, the percentage described  
13          in clause (i) shall be reduced (not below  
14          zero) by the product of such percentage  
15          (before the application of this clause) and  
16          the ratio of such excess to 50,000 barrels.

17          “(b) DEFINITIONS.—For purposes of this section—

18           “(1) QUALIFIED CAPITAL COSTS.—The term  
19          ‘qualified capital costs’ means any costs which—

20           “(A) are otherwise chargeable to capital  
21          account, and

22           “(B) are paid or incurred for the purpose  
23          of complying with the Highway Diesel Fuel Sul-  
24          fur Control Requirement of the Environmental  
25          Protection Agency, as in effect on the date of

1           the enactment of this section, with respect to a  
2           facility placed in service by the taxpayer before  
3           such date.

4           “(2) SMALL BUSINESS REFINER.—The term  
5           ‘small business refiner’ means, with respect to any  
6           taxable year, a refiner of crude oil, which, within the  
7           refinery operations of the business, employs not  
8           more than 1,500 employees on any day during such  
9           taxable year and whose average daily refinery run  
10          for the 1-year period ending on the date of the en-  
11          actment of this section did not exceed 205,000 bar-  
12          rels.

13          “(c) COORDINATION WITH OTHER PROVISIONS.—  
14          Section 280B shall not apply to amounts which are treated  
15          as expenses under this section.

16          “(d) BASIS REDUCTION.—For purposes of this title,  
17          the basis of any property shall be reduced by the portion  
18          of the cost of such property taken into account under sub-  
19          section (a).

20          “(e) CONTROLLED GROUPS.—For purposes of this  
21          section, all persons treated as a single employer under sub-  
22          section (b), (c), (m), or (o) of section 414 shall be treated  
23          as a single employer.”.

24          (b) CONFORMING AMENDMENTS.—



1           (1) Section 263(a)(1), as amended by this Act,  
2           is amended by striking “or” at the end of subpara-  
3           graph (I), by striking the period at the end of sub-  
4           paragraph (J) and inserting “, or”, and by inserting  
5           after subparagraph (J) the following new subpara-  
6           graph:

7                     “(K) expenditures for which a deduction is  
8                     allowed under section 179D.”.

9           (2) Section 263A(c)(3) is amended by inserting  
10          “179C,” after “section”.

11          (3) Section 312(k)(3)(B), as amended by this  
12          Act, is amended by striking “or 179C” each place  
13          it appears in the heading and text and inserting “,  
14          179C, or 179D”.

15          (4) Section 1016(a), as amended by this Act, is  
16          amended by striking “and” at the end of paragraph  
17          (33), by striking the period at the end of paragraph  
18          (34) and inserting “, and”, and by adding at the  
19          end the following new paragraph:

20                     “(35) to the extent provided in section  
21                     179D(d).”.

22          (5) Section 1245(a), as amended by this Act, is  
23          amended by inserting “179D,” after “179C,” both  
24          places it appears in paragraphs (2)(C) and (3)(C).

1           (6) The table of sections for part VI of sub-  
 2           chapter B of chapter 1, as amended by this Act, is  
 3           amended by inserting after section 179C the fol-  
 4           lowing new item:

“Sec. 179D. Deduction for capital costs incurred in complying with Environ-  
 mental Protection Agency sulfur regulations.”.

5           (c) EFFECTIVE DATE.—The amendment made by  
 6           this section shall apply to expenses paid or incurred after  
 7           the date of the enactment of this Act, in taxable years  
 8           ending after such date.

9   **SEC. 505. ENVIRONMENTAL TAX CREDIT.**

10          (a) IN GENERAL.—Subpart D of part IV of sub-  
 11          chapter A of chapter 1 (relating to business-related cred-  
 12          its), as amended by this Act, is amended by adding at  
 13          the end the following new section:

14   **“SEC. 45L. ENVIRONMENTAL TAX CREDIT.**

15          “(a) IN GENERAL.—For purposes of section 38, the  
 16          amount of the environmental tax credit determined under  
 17          this section with respect to any small business refiner for  
 18          any taxable year is an amount equal to 5 cents for every  
 19          gallon of 15 parts per million or less sulfur diesel produced  
 20          at a facility by such small business refiner during such  
 21          taxable year.

22          “(b) MAXIMUM CREDIT.—

23                  “(1) IN GENERAL.—For any small business re-  
 24          finer, the aggregate amount determined under sub-

1 section (a) for any taxable year with respect to any  
 2 facility shall not exceed the applicable percentage of  
 3 the qualified capital costs paid or incurred by such  
 4 small business refiner with respect to such facility  
 5 during the applicable period, reduced by the credit  
 6 allowed under subsection (a) for any preceding year.

7 “(2) APPLICABLE PERCENTAGE.—For purposes  
 8 of paragraph (1)—

9 “(A) IN GENERAL.—Except as provided in  
 10 subparagraph (B), the applicable percentage is  
 11 25 percent.

12 “(B) REDUCED PERCENTAGE.—The per-  
 13 centage described in subparagraph (A) shall be  
 14 reduced in the same manner as under section  
 15 179D(a)(2)(B)(ii).

16 “(c) DEFINITIONS.—For purposes of this section—

17 “(1) IN GENERAL.—The terms ‘small business  
 18 refiner’ and ‘qualified capital costs’ have the same  
 19 meaning as given in section 179D.

20 “(2) APPLICABLE PERIOD.—The term ‘applica-  
 21 ble period’ means, with respect to any facility, the  
 22 period beginning on the day after the date which is  
 23 1 year after the date of the enactment of this section  
 24 and ending with the date which is 1 year after the  
 25 date on which the taxpayer must comply with the

1 applicable EPA regulations with respect to such fa-  
2 cility.

3 “(3) APPLICABLE EPA REGULATIONS.—The  
4 term ‘applicable EPA regulations’ means the High-  
5 way Diesel Fuel Sulfur Control Requirements of the  
6 Environmental Protection Agency, as in effect on  
7 the date of the enactment of this section.

8 “(d) CERTIFICATION.—

9 “(1) REQUIRED.—Not later than the date  
10 which is 30 months after the first day of the first  
11 taxable year in which the environmental tax credit is  
12 allowed with respect to qualified capital costs paid or  
13 incurred with respect to a facility, the small business  
14 refiner shall obtain a certification from the Sec-  
15 retary, in consultation with the Administrator of the  
16 Environmental Protection Agency, that the tax-  
17 payer’s qualified capital costs with respect to such  
18 facility will result in compliance with the applicable  
19 EPA regulations.

20 “(2) CONTENTS OF APPLICATION.—An applica-  
21 tion for certification shall include relevant informa-  
22 tion regarding unit capacities and operating charac-  
23 teristics sufficient for the Secretary, in consultation  
24 with the Administrator of the Environmental Protec-  
25 tion Agency, to determine that such qualified capital

1 costs are necessary for compliance with the applica-  
2 ble EPA regulations.

3 “(3) REVIEW PERIOD.—Any application shall  
4 be reviewed and notice of certification, if applicable,  
5 shall be made within 60 days of receipt of such ap-  
6 plication. In the event the Secretary does not notify  
7 the taxpayer of the results of such certification with-  
8 in such period, the taxpayer may presume the cer-  
9 tification to be issued until so notified.

10 “(4) STATUTE OF LIMITATIONS.—With respect  
11 to the credit allowed under this section—

12 “(A) the statutory period for the assess-  
13 ment of any deficiency attributable to such  
14 credit shall not expire before the end of the 3-  
15 year period ending on the date that the review  
16 period described in paragraph (3) ends, and

17 “(B) such deficiency may be assessed be-  
18 fore the expiration of such 3-year period not-  
19 withstanding the provisions of any other law or  
20 rule of law which would otherwise prevent such  
21 assessment.

22 “(e) CONTROLLED GROUPS.—For purposes of this  
23 section, all persons treated as a single employer under sub-  
24 section (b), (c), (m), or (o) of section 414 shall be treated  
25 as a single employer.

1 “(f) COOPERATIVE ORGANIZATIONS.—

2 “(1) APPORTIONMENT OF CREDIT.—In the case  
3 of a cooperative organization described in section  
4 1381(a), any portion of the credit determined under  
5 subsection (a) of this section, for the taxable year  
6 may, at the election of the organization, be appor-  
7 tioned among patrons eligible to share in patronage  
8 dividends on the basis of the quantity or value of  
9 business done with or for such patrons for the tax-  
10 able year. Such an election shall be irrevocable for  
11 such taxable year.

12 “(2) TREATMENT OF ORGANIZATIONS AND PA-  
13 TRONS.—

14 “(A) ORGANIZATIONS.—The amount of the  
15 credit not apportioned to patrons pursuant to  
16 paragraph (1) shall be included in the amount  
17 determined under subsection (a) for the taxable  
18 year of the organization.

19 “(B) PATRONS.—The amount of the credit  
20 apportioned to patrons pursuant to paragraph  
21 (1) shall be included in the amount determined  
22 under subsection (a) for the first taxable year  
23 of each patron ending on or after the last day  
24 of the payment period (as defined in section  
25 1382(d)) for the taxable year of the organiza-

1           tion or, if earlier, for the taxable year of each  
 2           patron ending on or after the date on which the  
 3           patron receives notice from the cooperative of  
 4           the apportionment.”.

5           (b) CREDIT MADE PART OF GENERAL BUSINESS  
 6 CREDIT.—Subsection (b) of section 38 (relating to general  
 7 business credit), as amended by this Act, is amended by  
 8 striking “plus” at the end of paragraph (21), by striking  
 9 the period at the end of paragraph (22) and inserting “,  
 10 plus”, and by adding at the end the following new para-  
 11 graph:

12           “(23) in the case of a small business refiner,  
 13           the environmental tax credit determined under sec-  
 14           tion 45L(a).”.

15           (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
 16 (relating to certain expenses for which credits are allow-  
 17 able), as amended by this Act, is amended by adding after  
 18 subsection (d) the following new subsection:

19           “(e) ENVIRONMENTAL TAX CREDIT.—No deduction  
 20 shall be allowed for that portion of the expenses otherwise  
 21 allowable as a deduction for the taxable year which is  
 22 equal to the amount of the credit determined for the tax-  
 23 able year under section 45L(a).”.

24           (d) CLERICAL AMENDMENT.—The table of sections  
 25 for subpart D of part IV of subchapter A of chapter 1,

1 as amended by this Act, is amended by adding at the end  
 2 the following new item:

“Sec. 45L. Environmental tax credit.”.

3 (e) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to expenses paid or incurred after  
 5 the date of the enactment of this Act, in taxable years  
 6 ending after such date.

7 **SEC. 506. DETERMINATION OF SMALL REFINER EXCEPTION**  
 8 **TO OIL DEPLETION DEDUCTION.**

9 (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
 10 (relating to certain refiners excluded) is amended to read  
 11 as follows:

12 “(4) CERTAIN REFINERS EXCLUDED.—If the  
 13 taxpayer or 1 or more related persons engages in the  
 14 refining of crude oil, subsection (c) shall not apply  
 15 to the taxpayer for a taxable year if the average  
 16 daily refinery runs of the taxpayer and such persons  
 17 for the taxable year exceed 60,000 barrels. For pur-  
 18 poses of this paragraph, the average daily refinery  
 19 runs for any taxable year shall be determined by di-  
 20 viding the aggregate refinery runs for the taxable  
 21 year by the number of days in the taxable year.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 this section shall apply to taxable years beginning after  
 24 December 31, 2002.



1 **SEC. 507. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**  
2 **SION.**

3 (a) IN GENERAL.—Section 613A(c)(6)(H) (relating  
4 to temporary suspension of taxable income limit with re-  
5 spect to marginal production) is amended by striking  
6 “2002” and inserting “2007”.

7 (b) EFFECTIVE DATE.—The amendments made by  
8 this section shall take effect on and after January 1, 2002.

9 **SEC. 508. AMORTIZATION OF GEOLOGICAL AND GEO-**  
10 **PHYSICAL EXPENDITURES.**

11 (a) IN GENERAL.—Part VI of subchapter B of chap-  
12 ter 1, as amended by this Act, is amended by adding at  
13 the end the following new section:

14 **“SEC. 199. AMORTIZATION OF GEOLOGICAL AND GEO-**  
15 **PHYSICAL EXPENDITURES FOR DOMESTIC**  
16 **OIL AND GAS WELLS.**

17 “A taxpayer shall be entitled to an amortization de-  
18 duction with respect to any geological and geophysical ex-  
19 penses incurred in connection with the exploration for, or  
20 development of, oil or gas within the United States (as  
21 defined in section 638) based on a period of 24 months  
22 beginning with the month in which such expenses were in-  
23 curred.”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
25 for part VI of subchapter B of chapter 1, as amended by

1 this Act, is amended by adding at the end the following  
 2 new item:

“Sec. 199. Amortization of geological and geophysical expenditures for domestic  
 oil and gas wells.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to costs paid or incurred in taxable  
 5 years beginning after December 31, 2002.

6 **SEC. 509. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

7 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 8 ter 1, as amended by this Act, is amended by adding at  
 9 the end the following new section:

10 **“SEC. 199A. AMORTIZATION OF DELAY RENTAL PAYMENTS**  
 11 **FOR DOMESTIC OIL AND GAS WELLS.**

12 “(a) IN GENERAL.—A taxpayer shall be entitled to  
 13 an amortization deduction with respect to any delay rental  
 14 payments incurred in connection with the development of  
 15 oil or gas within the United States (as defined in section  
 16 638) based on a period of 24 months beginning with the  
 17 month in which such payments were incurred.”.

18 “(b) DELAY RENTAL PAYMENTS.—For purposes of  
 19 this section, the term ‘delay rental payment’ means an  
 20 amount paid for the privilege of deferring development of  
 21 an oil or gas well under an oil or gas lease.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
 23 for part VI of subchapter B of chapter 1, as amended by

1 this Act, is amended by adding at the end the following  
 2 new item:

“Sec. 199A. Amortization of delay rental payments for domestic oil and gas  
 wells.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to amounts paid or incurred in tax-  
 5 able years beginning after December 31, 2002.

6 **SEC. 510. STUDY OF COAL BED METHANE.**

7 (a) IN GENERAL.—The Secretary of the Treasury  
 8 shall study the effect of section 29 of the Internal Revenue  
 9 Code of 1986 on the production of coal bed methane. Such  
 10 study shall be made in conjunction with the study to be  
 11 undertaken by the Secretary of the Interior on the effects  
 12 of coal bed methane production on surface and water re-  
 13 sources, as provided in section 607 of the Energy Policy  
 14 Act of 2002.

15 (b) CONTENTS OF STUDY.—The study under sub-  
 16 section (a) shall estimate the total amount of credits under  
 17 section 29 of the Internal Revenue Code of 1986 claimed  
 18 annually and in the aggregate which are related to the  
 19 production of coal bed methane since the date of the enact-  
 20 ment of such section 29. Such study shall report the an-  
 21 nual value of such credits allowable for coal bed methane  
 22 compared to the average annual wellhead price of natural  
 23 gas (per thousand cubic feet of natural gas). Such study  
 24 shall also estimate the incremental increase in production

1 of coal bed methane that has resulted from the enactment  
 2 of such section 29, and the cost to the Federal Govern-  
 3 ment, in terms of the net tax benefits claimed, per thou-  
 4 sand cubic feet of incremental coal bed methane produced  
 5 annually and in the aggregate since such enactment.

6 **SEC. 511. EXTENSION AND MODIFICATION OF CREDIT FOR**  
 7 **PRODUCING FUEL FROM A NONCONVEN-**  
 8 **TIONAL SOURCE.**

9 (a) IN GENERAL.—Section 29 is amended by adding  
 10 at the end the following new subsection:

11 “(h) EXTENSION FOR OTHER FACILITIES.—

12 “(1) OIL AND GAS.—In the case of a well or fa-  
 13 cility for producing qualified fuels described in sub-  
 14 paragraph (A) or (B) of subsection (c)(1) which was  
 15 drilled or placed in service after the date of the en-  
 16 actment of this subsection and before January 1,  
 17 2005, notwithstanding subsection (f), this section  
 18 shall apply with respect to such fuels produced at  
 19 such well or facility not later than the close of the  
 20 3-year period beginning on the date that such well  
 21 is drilled or such facility is placed in service.

22 “(2) FACILITIES PRODUCING REFINED COAL.—

23 “(A) IN GENERAL.—In the case of a facil-  
 24 ity described in subparagraph (C) for producing  
 25 refined coal which was placed in service after

the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to fuel produced at such facility not later than the close of the 5-year period beginning on the date such facility is placed in service.

“(B) REFINED COAL.—For purposes of this paragraph, the term ‘refined coal’ means a fuel which is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock.

“(C) COVERED FACILITIES.—

“(i) IN GENERAL.—A facility is described in this subparagraph if such facility produces refined coal using a technology that results in—

“(I) a qualified emission reduction, and

“(II) a qualified enhanced value.

“(ii) QUALIFIED EMISSION REDUCTION.—For purposes of this subparagraph, the term ‘qualified emission reduction’ means a reduction of at least 20 percent of the emissions of sulfur dioxide and nitro-

1 gen oxide released when burning the re-  
2 fined coal (excluding any dilution caused  
3 by materials combined or added during the  
4 production process), as compared to the  
5 emissions released when burning the feed-  
6 stock coal or comparable coal predomi-  
7 nantly available in the marketplace as of  
8 January 1, 2002.

9 “(iii) QUALIFIED ENHANCED  
10 VALUE.—For purposes of this subpara-  
11 graph, the term ‘qualified enhanced value’  
12 means an increase of at least 50 percent in  
13 the market value of the refined coal (ex-  
14 cluding any increase caused by materials  
15 combined or added during the production  
16 process), as compared to the value of the  
17 feedstock coal or comparable coal predomi-  
18 nantly available in the marketplace as of  
19 January 1, 2002.

20 “(iv) QUALIFYING ADVANCED CLEAN  
21 COAL TECHNOLOGY FACILITIES EX-  
22 CLUDED.—A facility described in this sub-  
23 paragraph shall not include a qualifying  
24 advanced clean coal technology facility (as  
25 defined in section 48A(b)).

1 “(3) WELLS PRODUCING VISCOUS OIL.—

2 “(A) IN GENERAL.—In the case of a well  
3 for producing viscous oil which was placed in  
4 service after the date of the enactment of this  
5 subsection and before January 1, 2005, this  
6 section shall apply with respect to fuel produced  
7 at such well not later than the close of the 3-  
8 year period beginning on the date such well is  
9 placed in service.

10 “(B) VISCOUS OIL.—The term “viscous oil’  
11 means heavy oil, as defined in section  
12 613A(c)(6), except that—

13 “(i) ‘22 degrees’ shall be substituted  
14 for ‘20 degrees’ in applying subparagraph  
15 (F) thereof, and

16 “(ii) in all cases, the oil gravity shall  
17 be measured from the initial well-head  
18 samples, drill cuttings, or down hole sam-  
19 ples.

20 “(C) WAIVER OF UNRELATED PERSON RE-  
21 QUIREMENT.—In the case of viscous oil, the re-  
22 quirement under subsection (a)(1)(B)(i) of a  
23 sale to an unrelated person shall not apply to  
24 any sale to the extent that the viscous oil is not

1 consumed in the immediate vicinity of the well-  
2 head.

3 “(4) COALMINE METHANE GAS.—

4 “(A) IN GENERAL.—This section shall  
5 apply to coalmine methane gas—

6 “(i) captured or extracted by the tax-  
7 payer after the date of the enactment of  
8 this subsection and before January 1,  
9 2005, and

10 “(ii) utilized as a fuel source or sold  
11 by or on behalf of the taxpayer to an unre-  
12 lated person after the date of the enact-  
13 ment of this subsection and before January  
14 1, 2005.

15 “(B) COALMINE METHANE GAS.—For pur-  
16 poses of this paragraph, the term ‘coalmine  
17 methane gas’ means any methane gas which  
18 is—

19 “(i) liberated during qualified coal  
20 mining operations, or

21 “(ii) extracted up to 5 years in ad-  
22 vance of qualified coal mining operations  
23 as part of a specific plan to mine a coal  
24 deposit.



1           “(C) SPECIAL RULE FOR ADVANCED EX-  
2           TRACTION.—In the case of coalmine methane  
3           gas which is captured in advance of qualified  
4           coal mining operations, the credit under sub-  
5           section (a) shall be allowed only after the date  
6           the coal extraction occurs in the immediate area  
7           where the coalmine methane gas was removed.

8           “(D) NONCOMPLIANCE WITH POLLUTION  
9           LAWS.—For purposes of subparagraphs (B)  
10          and (C), coal mining operations which are not  
11          in compliance with the applicable State and  
12          Federal pollution prevention, control, and per-  
13          mit requirements for any period of time shall  
14          not be considered to be qualified coal mining  
15          operations during such period.

16          “(5) CREDIT AMOUNT.—In the case of fuels  
17          sold from facilities described in this subsection, the  
18          dollar amount applicable under subsection (a)(1)  
19          shall be \$3 (without regard to subsection (b)(2)).”.

20          (b) EFFECTIVE DATE.—The amendment made by  
21          this section shall apply to fuel sold after the date of the  
22          enactment of this Act.

1 **SEC. 512. NATURAL GAS DISTRIBUTION LINES TREATED AS**  
 2 **15-YEAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (E) of section  
 4 168(e)(3) (relating to classification of certain property) is  
 5 amended by striking “and” at the end of clause (ii), by  
 6 striking the period at the end of clause (iii) and by insert-  
 7 ing “, and”, and by adding at the end the following new  
 8 clause:

9 “(iv) any natural gas distribution  
 10 line.”.

11 (b) ALTERNATIVE SYSTEM.—The table contained in  
 12 section 168(g)(3)(B), as amended by this Act, is amended  
 13 by adding after the item relating to subparagraph (E)(iii)  
 14 the following new item:

“(E)(iv) ..... 20”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to property placed in service after  
 17 the date of the enactment of this Act, in taxable years  
 18 ending after such date.

19 **TITLE VI—ELECTRIC UTILITY**  
 20 **RESTRUCTURING PROVISIONS**

21 **SEC. 601. ONGOING STUDY AND REPORTS REGARDING TAX**  
 22 **ISSUES RESULTING FROM FUTURE RESTRUC-**  
 23 **TURING DECISIONS.**

24 (a) ONGOING STUDY.—The Secretary of the Treas-  
 25 ury, after consultation with the Federal Energy Regu-

1 latory Commission, shall undertake an ongoing study of  
2 Federal tax issues resulting from non-tax decisions on the  
3 restructuring of the electric industry. In particular, the  
4 study shall focus on the effect on tax-exempt bonding au-  
5 thority of public power entities and on corporate restruc-  
6 turing which results from the restructuring of the electric  
7 industry.

8 (b) REGULATORY RELIEF.—In connection with the  
9 study described in subsection (a), the Secretary of the  
10 Treasury should exercise the Secretary's authority, as ap-  
11 propriate, to modify or suspend regulations that may im-  
12 pede an electric utility company's ability to reorganize its  
13 capital stock structure to respond to a competitive market-  
14 place.

15 (c) REPORTS.—The Secretary of the Treasury shall  
16 report to the Committee on Finance of the Senate and  
17 the Committee on Ways and Means of the House of Rep-  
18 resentatives not later than December 31, 2002, regarding  
19 Federal tax issues identified under the study described in  
20 subsection (a), and at least annually thereafter, regarding  
21 such issues identified since the preceding report. Such re-  
22 ports shall also include such legislative recommendations  
23 regarding changes to the private business use rules under  
24 subpart A of part IV of subchapter B of chapter 1 of the  
25 Internal Revenue Code of 1986 as the Secretary of the

1 Treasury deems necessary. The reports shall continue  
 2 until such time as the Federal Energy Regulatory Com-  
 3 mission has completed the restructuring of the electric in-  
 4 dustry.

5 **SEC. 602. MODIFICATIONS TO SPECIAL RULES FOR NU-**  
 6 **CLEAR DECOMMISSIONING COSTS.**

7 (a) REPEAL OF LIMITATION ON DEPOSITS INTO  
 8 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS  
 9 AFTER FUNDING PERIOD.—Subsection (b) of section  
 10 468A is amended to read as follows:

11 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—  
 12 The amount which a taxpayer may pay into the Fund for  
 13 any taxable year shall not exceed the ruling amount appli-  
 14 cable to such taxable year.”.

15 (b) CLARIFICATION OF TREATMENT OF FUND  
 16 TRANSFERS.—Subsection (e) of section 468A is amended  
 17 by adding at the end the following new paragraph:

18 “(8) TREATMENT OF FUND TRANSFERS.—If, in  
 19 connection with the transfer of the taxpayer’s inter-  
 20 est in a nuclear powerplant, the taxpayer transfers  
 21 the Fund with respect to such powerplant to the  
 22 transferee of such interest and the transferee elects  
 23 to continue the application of this section to such  
 24 Fund—

1           “(A) the transfer of such Fund shall not  
 2           cause such Fund to be disqualified from the ap-  
 3           plication of this section, and

4           “(B) no amount shall be treated as distrib-  
 5           uted from such Fund, or be includible in gross  
 6           income, by reason of such transfer.”.

7           (c) DEDUCTION FOR NUCLEAR DECOMMISSIONING  
 8           COSTS WHEN PAID.—Paragraph (2) of section 468A(c)  
 9           is amended to read as follows:

10           “(2) DEDUCTION OF NUCLEAR DECOMMIS-  
 11           SIONING COSTS.—In addition to any deduction under  
 12           subsection (a), nuclear decommissioning costs paid  
 13           or incurred by the taxpayer during any taxable year  
 14           shall constitute ordinary and necessary expenses in  
 15           carrying on a trade or business under section 162.”.

16           (d) EFFECTIVE DATE.—The amendments made by  
 17           this section shall apply to taxable years beginning after  
 18           December 31, 2002.

19           **SEC. 603. TREATMENT OF CERTAIN INCOME OF COOPERA-**  
 20           **TIVES.**

21           (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-  
 22           COMMISSIONING TRANSACTIONS.—

23           (1) IN GENERAL.—Subparagraph (C) of section  
 24           501(c)(12) is amended by striking “or” at the end

of clause (i), by striking clause (ii), and by adding  
at the end the following new clauses:

“(ii) from any open access transaction  
(other than income received or accrued di-  
rectly or indirectly from a member),

“(iii) from any nuclear decommis-  
sioning transaction,

“(iv) from any asset exchange or con-  
version transaction, or

“(v) from the prepayment of any loan,  
debt, or obligation made, insured, or guar-  
anteed under the Rural Electrification Act  
of 1936.”.

(2) DEFINITIONS AND SPECIAL RULES.—Para-  
graph (12) of section 501(c) is amended by adding  
at the end the following new subparagraphs:

“(E) For purposes of subparagraph  
(C)(ii)—

“(i) The term ‘open access trans-  
action’ means any transaction meeting the  
open access requirements of any of the fol-  
lowing subclauses with respect to a mutual  
or cooperative electric company:

“(I) The provision or sale of  
transmission service or ancillary serv-

1           ices meets the open access require-  
2           ments of this subclause only if such  
3           services are provided on a nondiscrim-  
4           inatory open access basis pursuant to  
5           an open access transmission tariff  
6           filed with and approved by FERC, in-  
7           cluding an acceptable reciprocity tar-  
8           iff, or under a regional transmission  
9           organization agreement approved by  
10          FERC.

11           “(II) The provision or sale of  
12          electric energy distribution services or  
13          ancillary services meets the open ac-  
14          cess requirements of this subclause  
15          only if such services are provided on a  
16          nondiscriminatory open access basis to  
17          end-users served by distribution facili-  
18          ties owned by the mutual or coopera-  
19          tive electric company (or its mem-  
20          bers).

21           “(III) The delivery or sale of  
22          electric energy generated by a genera-  
23          tion facility meets the open access re-  
24          quirements of this subclause only if  
25          such facility is directly connected to

1 distribution facilities owned by the  
2 mutual or cooperative electric com-  
3 pany (or its members) which owns the  
4 generation facility, and such distribu-  
5 tion facilities meet the open access re-  
6 quirements of subclause (II).

7 “(ii) Clause (i)(I) shall apply in the  
8 case of a voluntarily filed tariff only if the  
9 mutual or cooperative electric company  
10 files a report with FERC within 90 days  
11 after the date of the enactment of this sub-  
12 paragraph relating to whether or not such  
13 company will join a regional transmission  
14 organization.

15 “(iii) A mutual or cooperative electric  
16 company shall be treated as meeting the  
17 open access requirements of clause (i)(I) if  
18 a regional transmission organization con-  
19 trols the transmission facilities.

20 “(iv) References to FERC in this sub-  
21 paragraph shall be treated as including  
22 references to the Public Utility Commis-  
23 sion of Texas with respect to any ERCOT  
24 utility (as defined in section 212(k)(2)(B)  
25 of the Federal Power Act (16 U.S.C.



1 824k(k)(2)(B))) or references to the Rural  
2 Utilities Service with respect to any other  
3 facility not subject to FERC jurisdiction.

4 “(v) For purposes of this  
5 subparagraph—

6 “(I) The term ‘transmission facil-  
7 ity’ means an electric output facility  
8 (other than a generation facility) that  
9 operates at an electric voltage of 69  
10 kV or greater. To the extent provided  
11 in regulations, such term includes any  
12 output facility that FERC determines  
13 is a transmission facility under stand-  
14 ards applied by FERC under the Fed-  
15 eral Power Act (as in effect on the  
16 date of the enactment of the Energy  
17 Tax Incentives Act of 2002).

18 “(II) The term ‘regional trans-  
19 mission organization’ includes an  
20 independent system operator.

21 “(III) The term ‘FERC’ means  
22 the Federal Energy Regulatory Com-  
23 mission.

24 “(F) The term ‘nuclear decommissioning  
25 transaction’ means—

1                   “(i) any transfer into a trust, fund, or  
2                   instrument established to pay any nuclear  
3                   decommissioning costs if the transfer is in  
4                   connection with the transfer of the mutual  
5                   or cooperative electric company’s interest  
6                   in a nuclear powerplant or nuclear power-  
7                   plant unit,

8                   “(ii) any distribution from any trust,  
9                   fund, or instrument established to pay any  
10                  nuclear decommissioning costs, or

11                  “(iii) any earnings from any trust,  
12                  fund, or instrument established to pay any  
13                  nuclear decommissioning costs.

14                  “(G) The term ‘asset exchange or conver-  
15                  sion transaction’ means any voluntary exchange  
16                  or involuntary conversion of any property re-  
17                  lated to generating, transmitting, distributing,  
18                  or selling electric energy by a mutual or cooper-  
19                  ative electric company, the gain from which  
20                  qualifies for deferred recognition under section  
21                  1031 or 1033, but only if the replacement prop-  
22                  erty acquired by such company pursuant to  
23                  such section constitutes property which is used,  
24                  or to be used, for—

1 “(i) generating, transmitting, distrib-  
2 uting, or selling electric energy, or

3 “(ii) producing, transmitting, distrib-  
4 uting, or selling natural gas.”.

5 (b) TREATMENT OF INCOME FROM LOAD LOSS  
6 TRANSACTIONS.—Paragraph (12) of section 501(c), as  
7 amended by subsection (a)(2), is amended by adding after  
8 subparagraph (G) the following new subparagraph:

9 “(H)(i) In the case of a mutual or coopera-  
10 tive electric company described in this para-  
11 graph or an organization described in section  
12 1381(a)(2)(C), income received or accrued from  
13 a load loss transaction shall be treated as an  
14 amount collected from members for the sole  
15 purpose of meeting losses and expenses.

16 “(ii) For purposes of clause (i), the term  
17 ‘load loss transaction’ means any wholesale or  
18 retail sale of electric energy (other than to  
19 members) to the extent that the aggregate sales  
20 during the recovery period does not exceed the  
21 load loss mitigation sales limit for such period.

22 “(iii) For purposes of clause (ii), the load  
23 loss mitigation sales limit for the recovery pe-  
24 riod is the sum of the annual load losses for  
25 each year of such period.

1           “(iv) For purposes of clause (iii), a mutual  
2           or cooperative electric company’s annual load  
3           loss for each year of the recovery period is the  
4           amount (if any) by which—

5                   “(I) the megawatt hours of electric  
6                   energy sold during such year to members  
7                   of such electric company are less than

8                   “(II) the megawatt hours of electric  
9                   energy sold during the base year to such  
10                  members.

11               “(v) For purposes of clause (iv)(II), the  
12               term ‘base year’ means—

13                   “(I) the calendar year preceding the  
14                   start-up year, or

15                   “(II) at the election of the electric  
16                   company, the second or third calendar  
17                   years preceding the start-up year.

18               “(vi) For purposes of this subparagraph,  
19               the recovery period is the 7-year period begin-  
20               ning with the start-up year.

21               “(vii) For purposes of this subparagraph,  
22               the start-up year is the calendar year which in-  
23               cludes the date of the enactment of this sub-  
24               paragraph or, if later, at the election of the mu-  
25               tual or cooperative electric company—

1 “(I) the first year that such electric  
2 company offers nondiscriminatory open ac-  
3 cess, or

4 “(II) the first year in which at least  
5 10 percent of such electric company’s sales  
6 are not to members of such electric com-  
7 pany.

8 “(viii) A company shall not fail to be treat-  
9 ed as a mutual or cooperative company for pur-  
10 poses of this paragraph or as a corporation op-  
11 erating on a cooperative basis for purposes of  
12 section 1381(a)(2)(C) by reason of the treat-  
13 ment under clause (i).

14 “(ix) In the case of a mutual or coopera-  
15 tive electric company, income from any open ac-  
16 cess transaction received, or accrued, indirectly  
17 from a member shall be treated as an amount  
18 collected from members for the sole purpose of  
19 meeting losses and expenses.”.

20 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-  
21 ABLE INCOME.—Subsection (b) of section 512 (relating to  
22 modifications) is amended by adding at the end the fol-  
23 lowing new paragraph:

24 “(18) TREATMENT OF MUTUAL OR COOPERA-  
25 TIVE ELECTRIC COMPANIES.—In the case of a mu-

1 tual or cooperative electric company described in sec-  
 2 tion 501(c)(12), there shall be excluded income  
 3 which is treated as member income under subpara-  
 4 graph (H) thereof.”.

5 (d) CROSS REFERENCE.—Section 1381 is amended  
 6 by adding at the end the following new subsection:

7 “(c) CROSS REFERENCE.—

**“For treatment of income from load loss trans-  
 actions of organizations described in subsection  
 (a)(2)(C), see section 501(c)(12)(H).”.**

8 (e) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to taxable years beginning after  
 10 the date of the enactment of this Act.

## 11 **TITLE VII—ADDITIONAL** 12 **PROVISIONS**

### 13 **SEC. 701. EXTENSION OF ACCELERATED DEPRECIATION** 14 **AND WAGE CREDIT BENEFITS ON INDIAN** 15 **RESERVATIONS.**

16 (a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON  
 17 INDIAN RESERVATIONS.—Section 168(j)(8) (relating to  
 18 termination) is amended by striking “2003” and inserting  
 19 “2005”.

20 (b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f)  
 21 (relating to termination) is amended by striking “2003”  
 22 and inserting “2005”.

1 **SEC. 702. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-**  
2 **SIONS BY GAO.**

3 (a) STUDY.—The Comptroller General of the United  
4 States shall undertake an ongoing analysis of—

5 (1) the effectiveness of the alternative motor ve-  
6 hicles and fuel incentives provisions under title II  
7 and the conservation and energy efficiency provisions  
8 under title III, and

9 (2) the recipients of the tax benefits contained  
10 in such provisions, including an identification of  
11 such recipients by income and other appropriate  
12 measurements.

13 Such analysis shall quantify the effectiveness of such pro-  
14 visions by examining and comparing the Federal Govern-  
15 ment's forgone revenue to the aggregate amount of energy  
16 actually conserved and tangible environmental benefits  
17 gained as a result of such provisions.

18 (b) REPORTS.—The Comptroller General of the  
19 United States shall report the analysis required under sub-  
20 section (a) to Congress not later than December 31, 2002,  
21 and annually thereafter.

**Calendar No. 320**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1979**

**[Report No. 107-140]**

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**A BILL**

To provide energy tax incentives.

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MARCH 1, 2002

Read twice and placed on the calendar