

109TH CONGRESS  
1ST SESSION

# S. 715

To amend the Internal Revenue Code of 1986 to encourage investment in facilities using wind to produce electricity, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 6, 2005

Mr. HARKIN (for himself, Mr. DAYTON, Mr. DURBIN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to encourage investment in facilities using wind to produce electricity, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wind Power Tax In-  
5 centives Act of 2005”.

1 **SEC. 2. OFFSET OF PASSIVE ACTIVITY LOSSES AND CRED-**  
2 **ITS OF AN ELIGIBLE TAXPAYER FROM WIND**  
3 **ENERGY FACILITIES.**

4 (a) IN GENERAL.—Section 469 of the Internal Rev-  
5 enue Code of 1986 (relating to passive activity losses and  
6 credits limited) is amended—

7 (1) by redesignating subsections (l) and (m) as  
8 subsections (m) and (n), respectively; and

9 (2) by inserting after subsection (k) the fol-  
10 lowing:

11 “(l) OFFSET OF PASSIVE ACTIVITY LOSSES AND  
12 CREDITS FROM WIND ENERGY FACILITIES.—

13 “(1) IN GENERAL.—Subsection (a) shall not  
14 apply to the portion of the passive activity loss, or  
15 the deduction equivalent (within the meaning of sub-  
16 section (j)(5)) of the portion of the passive activity  
17 credit, for any taxable year which is attributable to  
18 all interests of an eligible taxpayer in qualified facili-  
19 ties described in section 45(d)(1).

20 “(2) ELIGIBLE TAXPAYER.—For purposes of  
21 this subsection—

22 “(A) IN GENERAL.—The term ‘eligible tax-  
23 payer’ means, with respect to any taxable year,  
24 a taxpayer the adjusted gross income (taxable  
25 income in the case of a corporation) of which  
26 does not exceed \$1,000,000.

1           “(B) RULES FOR COMPUTING ADJUSTED  
2           GROSS INCOME.—Adjusted gross income shall  
3           be computed in the same manner as under sub-  
4           section (i)(3)(F).

5           “(C) AGGREGATION RULES.—All persons  
6           treated as a single employer under subsection  
7           (a) or (b) of section 52 shall be treated as a  
8           single taxpayer for purposes of this paragraph.

9           “(D) PASS-THRU ENTITIES.—In the case  
10          of a pass-thru entity, this paragraph shall be  
11          applied at the level of the person to which the  
12          credit is allocated by the entity.”.

13          (b) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to facilities placed in service after  
15          the date of the enactment of this Act.

16          **SEC. 3. APPLICATION OF CREDIT TO COOPERATIVES.**

17          (a) IN GENERAL.—Section 45(e) of the Internal Rev-  
18          enue Code of 1986 (relating to definitions and special  
19          rules) is amended by adding at the end the following:

20                  “(10) ALLOCATION OF CREDIT TO SHARE-  
21          HOLDERS OF COOPERATIVE.—

22                          “(A) ELECTION TO ALLOCATE.—

23                                  “(i) IN GENERAL.—In the case of a  
24                                  cooperative organization described in sec-  
25                                  tion 1381(a), any portion of the credit de-

1           terminated under subsection (a) for the tax-  
2           able year may, at the election of the orga-  
3           nization, be apportioned pro rata among  
4           shareholders of the organization on the  
5           basis of the capital contributions of the  
6           shareholders to the organization.

7           “(ii) FORM AND EFFECT OF ELEC-  
8           TION.—An election under clause (i) for any  
9           taxable year shall be made on a timely  
10          filed return for such year. Such election,  
11          once made, shall be irrevocable for such  
12          taxable year.

13          “(B) TREATMENT OF ORGANIZATIONS AND  
14          PATRONS.—The amount of the credit appor-  
15          tioned to any shareholders under subparagraph  
16          (A)—

17                 “(i) shall not be included in the  
18                 amount determined under subsection (a)  
19                 with respect to the organization for the  
20                 taxable year, and

21                 “(ii) shall be included in the amount  
22                 determined under subsection (a) for the  
23                 taxable year of the shareholder with or  
24                 within which the taxable year of the orga-  
25                 nization ends.

1           “(C) SPECIAL RULES FOR DECREASE IN  
2 CREDITS FOR TAXABLE YEAR.—If the amount  
3 of the credit of a cooperative organization de-  
4 termined under subsection (a) for a taxable  
5 year is less than the amount of such credit  
6 shown on the return of the cooperative organi-  
7 zation for such year, an amount equal to the  
8 excess of—

9                   “(i) such reduction, over

10                   “(ii) the amount not apportioned to  
11 such shareholders under subparagraph (A)  
12 for the taxable year, shall be treated as an  
13 increase in tax imposed by this chapter on  
14 the organization. Such increase shall not  
15 be treated as tax imposed by this chapter  
16 for purposes of determining the amount of  
17 any credit under this subpart or subpart  
18 A, B, E, or G.”.

19           (b) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years ending after the  
21 date of the enactment of this Act.

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