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REPORT
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RENEWABLE ENERGY AND ENERGY CONSERVATION TAX ACT OF 2007

JUNE 27, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RANGEL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2776]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2776) to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Renewable Energy and Energy Conservation Tax Act of 2007".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PRODUCTION INCENTIVES

Sec. 101. Extension and modification of renewable energy credit.
Sec. 102. Production credit for electricity produced from marine renewables.
Sec. 103. Extension and modification of energy credit.
Sec. 104. New clean renewable energy bonds.
Sec. 105. Extension and modification of special rule to implement FERC and State electric restructuring policy.

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Sec. 106. Repeal of dollar limitation and allowance against alternative minimum tax for residential solar and fuel cell property credit.

TITLE II—CONSERVATION

Subtitle A—Transportation

Sec. 201. Credit for plug-in hybrid vehicles.
Sec. 202. Extension and modification of alternative fuel vehicle refueling property credit.
Sec. 203. Extension and modification of credits for biodiesel and renewable diesel.
Sec. 204. Credit for production of cellulosic alcohol.
Sec. 205. Extension of transportation fringe benefit to bicycle commuters.
Sec. 206. Modification of limitation on automobile depreciation.
Sec. 207. Restructuring of New York Liberty Zone tax credits.

Subtitle B—Other Conservation Provisions

Sec. 211. Qualified energy conservation bonds.
Sec. 212. Qualified residential energy efficiency assistance bonds.
Sec. 213. Extension of energy efficient commercial buildings deduction.
Sec. 214. Modifications of energy efficient appliance credit for appliances produced after 2007.
Sec. 215. Five-year applicable recovery period for depreciation of qualified energy management devices.

TITLE III—REVENUE PROVISIONS

Subtitle A—Denial of Oil and Gas Tax Benefits

Sec. 301. Denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof.
Sec. 302. 7-year amortization of geological and geophysical expenditures for certain major integrated oil companies.
Sec. 303. Clarification of determination of foreign oil and gas extraction income.

Subtitle B—Clarification of Eligibility for Certain Fuel Credits

Sec. 311. Clarification of eligibility for renewable diesel credit.
Sec. 312. Clarification that credits for fuel are designed to provide an incentive for United States production.

TITLE IV—OTHER PROVISIONS

Subtitle A—Studies

Sec. 401. Carbon audit of the tax code.
Sec. 402. Comprehensive study of biofuels.

Subtitle B—Application of Certain Labor Standards on Projects Financed Under Tax Credit Bonds

Sec. 411. Application of certain labor standards on projects financed under tax credit bonds.

TITLE I—PRODUCTION INCENTIVES

SEC. 101. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—Each of the following provisions of section 45(d) (relating to qualified facilities) is amended by striking "January 1, 2009" and inserting "January 1, 2013":

(1) Paragraph (1).
(2) Clauses (i) and (ii) of paragraph (2)(A).
(3) Clauses (i)(I) and (ii) of paragraph (3)(A).
(4) Paragraph (4).
(5) Paragraph (5).
(6) Paragraph (6).
(7) Paragraph (7).
(8) Subparagraphs (A) and (B) of paragraph (9).

(b) MODIFICATION OF CREDIT PHASEOUT.—

(1) REPEAL OF PHASEOUT.—Subsection (b) of section 45 is amended—

(A) by striking paragraph (1), and

(B) by striking "the 8 cent amount in paragraph (1)," in paragraph (2) thereof.

(2) LIMITATION BASED ON INVESTMENT IN FACILITY.—Subsection (b) of section 45 is amended by inserting before paragraph (2) the following new paragraph:

"(1) LIMITATION BASED ON INVESTMENT IN FACILITY.—

"(A) IN GENERAL.—In the case of any qualified facility originally placed in service after December 31, 2008, the amount of the credit determined under subsection (a) for any taxable year with respect to electricity produced at such facility shall not exceed the product of—

"(i) the applicable percentage with respect to such facility, multiplied by

"(ii) the eligible basis of such facility.

"(B) CARRYFORWARD OF UNUSED LIMITATION AND EXCESS CREDIT.—

"(i) UNUSED LIMITATION.—If the limitation imposed under subparagraph (A) with respect to any facility for any taxable year exceeds the

credit determined under subsection (a) (determined without regard to this paragraph) with respect to such facility for such taxable year, the limitation imposed under subparagraph (A) with respect to such facility for the succeeding taxable year shall be increased by the amount of such excess.

"(ii) EXCESS CREDIT.—If the credit determined under subsection (a) (determined without regard to this paragraph) with respect to any facility for any taxable year exceeds the limitation imposed under subparagraph (A) with respect to such facility for such taxable year, the credit determined under subsection (a) with respect to such facility for the succeeding taxable year (determined before the application of subparagraph (A) for such succeeding taxable year) shall be increased by the amount of such excess. With respect to any facility, no amount may carried forward under this clause to any taxable year beginning after the 10-year period described in subsection (a)(2)(A)(ii) with respect to such facility.

"(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable percentage' means, with respect to any facility, the appropriate percentage prescribed by the Secretary for the month in which such facility is originally placed in service.

"(ii) METHOD OF PRESCRIBING PERCENTAGES.—The percentages prescribed by the Secretary for any month under clause (i) shall be percentages which yield over a 10-year period amounts of limitation under subparagraph (A) which have a present value equal to 35 percent of the eligible basis of the facility.

"(iii) METHOD OF DISCOUNTING.—The present value under clause (ii) shall be determined—

"(I) as of the last day of the 1st year of the 10-year period referred to in clause (ii),

"(II) by using a discount rate equal to the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month preceding the month for which the percentage is being prescribed, and

"(III) by taking into account the limitation under subparagraph (A) for any year on the last day of such year.

"(D) ELIGIBLE BASIS.—For purposes of this paragraph, the term 'eligible basis' means, with respect to any facility, the basis of such facility determined as of the time that such facility is originally placed in service.

"(E) SPECIAL RULE FOR FIRST AND LAST YEAR OF CREDIT PERIOD.—In the case of any taxable year any portion of which is not within the 10-year period described in subsection (a)(2)(A)(ii) with respect to any facility, the amount of the limitation under subparagraph (A) with respect to such facility shall be reduced by an amount which bears the same ratio to the amount of such limitation (determined without regard to this subparagraph) as such portion of the taxable year which is not within such period bears to the entire taxable year.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property originally placed in service after December 31, 2008.

(2) REPEAL OF CREDIT PHASEOUT.—The amendments made by subsection (b)(1) shall apply to taxable years ending after December 31, 2008.

SEC. 102. PRODUCTION CREDIT FOR ELECTRICITY PRODUCED FROM MARINE RENEWABLES.

(a) IN GENERAL.—Paragraph (1) of section 45(c) (relating to resources) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", and", and by adding at the end the following new subparagraph:

"(I) marine and hydrokinetic renewable energy.".

(b) MARINE RENEWABLES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraph:

"(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

"(A) IN GENERAL.—The term 'marine and hydrokinetic renewable energy' means energy derived from—

"(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

"(ii) free flowing water in rivers, lakes, and streams,

"(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures

to accelerate the flow of water for electric power production purposes, or

"(iv) differentials in ocean temperature (ocean thermal energy conversion).

"(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.".

(c) DEFINITION OF FACILITY.—Subsection (d) of section 45 is amended by adding at the end the following new paragraph:

"(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term 'qualified facility' means any facility owned by the taxpayer—

"(A) which has a nameplate capacity rating of at least 150 kilowatts, and

"(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2013.".

(d) CREDIT RATE.—Subparagraph (A) of section 45(b)(4) is amended by striking "or (9)" and inserting "(9), or (11)".

(e) COORDINATION WITH SMALL IRRIGATION POWER.—Paragraph (5) of section 45(d), as amended by this Act, is amended by striking "January 1, 2013" and inserting "the date of the enactment of paragraph (11)".

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

SEC. 103. EXTENSION AND MODIFICATION OF ENERGY CREDIT.

(a) EXTENSION OF CREDIT.—

(1) SOLAR ENERGY PROPERTY.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) (relating to energy credit) are each amended by striking "January 1, 2009" and inserting "January 1, 2017".

(2) FUEL CELL PROPERTY.—Subparagraph (E) of section 48(c)(1) (relating to qualified fuel cell property) is amended by striking "December 31, 2008" and inserting "December 31, 2016".

(b) ALLOWANCE OF ENERGY CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48.".

(c) INCREASE OF CREDIT LIMITATION FOR FUEL CELL PROPERTY.—Subparagraph (B) of section 48(c)(1) is amended by striking "$500" and inserting "$1,500".

(d) PUBLIC ELECTRIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(B) Paragraph (2) of section 48(c) is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(e) CLERICAL AMENDMENTS.—Paragraphs (1)(B) and (2)(B) of section 48(c) are each amended by striking "paragraph (1)" and inserting "subsection (a)".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

(3) INCREASE IN LIMITATION FOR FUEL CELL PROPERTY.—The amendment made by subsection (c) shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(4) PUBLIC ELECTRIC UTILITY PROPERTY.—The amendments made by subsection (d) shall apply to periods after June 20, 2007, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal

Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 104. NEW CLEAN RENEWABLE ENERGY BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax) is amended by adding at the end the following new subpart:

"Subpart I—Qualified Tax Credit Bonds

"Sec. 54A. Credit to holders of qualified tax credit bonds.
"Sec. 54B. New clean renewable energy bonds.

"SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.

"(a) ALLOWANCE OF CREDIT.—If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tax credit bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

"(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

"(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

"(d) QUALIFIED TAX CREDIT BOND.—For purposes of this section—

"(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means a new clean renewable energy bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6).

"(2) SPECIAL RULES RELATING TO EXPENDITURES.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

"(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

"(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

"(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

"(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the

expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

"(ii) EXPENDITURE PERIOD.—For purposes of this subpart, the term 'expenditure period' means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

"(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

"(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means a purpose specified in section 54B(a)(1).

"(D) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

"(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

"(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

"(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

"(3) REPORTING.—An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

"(4) SPECIAL RULES RELATING TO ARBITRAGE.—

"(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

"(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

"(C) SPECIAL RULE FOR RESERVE FUNDS.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

"(i) such fund is funded at a rate not more rapid than equal annual installments,

"(ii) such fund is funded in a manner that such fund will not exceed the amount necessary to repay the issue if invested at the maximum rate permitted under clause (iii), and

"(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

"(5) MATURITY LIMITATION.—

"(A) IN GENERAL.—An issue shall not be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue exceeds the maximum term determined by the Secretary under subparagraph (B).

"(B) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

"(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST.—An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

"(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

"(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

"(e) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means—

"(A) March 15,

"(B) June 15,

"(C) September 15, and

"(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) STATE.—The term 'State' includes the District of Columbia and any possession of the United States.

"(4) AVAILABLE PROJECT PROCEEDS.—The term 'available project proceeds' means—

"(A) the excess of—

"(i) the proceeds from the sale of an issue, over

"(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

"(B) the proceeds from any investment of the excess described in subparagraph (A).

"(f) CREDIT TREATED AS INTEREST.—For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

"(g) S CORPORATIONS AND PARTNERSHIPS.—In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

"(h) BONDS HELD BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

"(i) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

"(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

"SEC. 54B. NEW CLEAN RENEWABLE ENERGY BONDS.

"(a) NEW CLEAN RENEWABLE ENERGY BOND.—For purposes of this subpart, the term 'new clean renewable energy bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by public power providers or cooperative electric companies for one or more qualified renewable energy facilities,

"(2) the bond is issued by a qualified issuer, and

"(3) the issuer designates such bond for purposes of this section.

"(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

"(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(1) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

"(2) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national new clean renewable energy bond limitation of $2,000,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

"(A) not more than 60 percent thereof may be allocated to qualified projects of public power providers, and

"(B) not more than 40 percent thereof may be allocated to qualified projects of cooperative electric companies.

"(3) METHOD OF ALLOCATION.—

"(A) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under subparagraph (2)(A) bears to the cost of all such projects.

"(B) ALLOCATION AMONG COOPERATIVE ELECTRIC COMPANIES.—The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraph (2)(B) among qualified projects of cooperative electric companies in such manner as the Secretary determines appropriate.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED RENEWABLE ENERGY FACILITY.—The term 'qualified renewable energy facility' means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider or a cooperative electric company.

"(2) PUBLIC POWER PROVIDER.—The term 'public power provider' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

"(3) COOPERATIVE ELECTRIC COMPANY.—The term 'cooperative electric company' means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

"(4) CLEAN RENEWABLE ENERGY BOND LENDER.—The term 'clean renewable energy bond lender' means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

"(5) QUALIFIED ISSUER.—The term 'qualified issuer' means a public power provider, a cooperative electric company, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.".

(b) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(9) REPORTING OF CREDIT ON QUALIFIED TAX CREDIT BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(c) CONFORMING AMENDMENTS.—

(1) Sections 54(c)(2) and 1400N(l)(3)(B) are each amended by striking "subpart C" and inserting "subparts C and I".

(2) Section 1397E(c)(2) is amended by striking "subpart H" and inserting "subparts H and I".

(3) Section 6401(b)(1) is amended by striking "and H" and inserting "H, and I".

(4) The heading of subpart H of part IV of subchapter A of chapter 1 is amended by striking "**Certain Bonds**" and inserting "**Clean Renewable Energy Bonds**".

(5) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart H and inserting the following new items:

"SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

"SUBPART I. QUALIFIED TAX CREDIT BONDS.".

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 105. EXTENSION AND MODIFICATION OF SPECIAL RULE TO IMPLEMENT FERC AND STATE ELECTRIC RESTRUCTURING POLICY.

(a) EXTENSION FOR QUALIFIED ELECTRIC UTILITIES.—

(1) IN GENERAL.—Paragraph (3) of section 451(i) (relating to special rule for sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy) is amended by striking "before January 1, 2008," and inserting "before January 1, 2010, by a qualified electric utility,".

(2) QUALIFIED ELECTRIC UTILITY.—Subsection (i) of section 451 is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) QUALIFIED ELECTRIC UTILITY.—For purposes of this subsection, the term 'qualified electric utility' means—

"(A) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))), and

"(B) any person in the same holding company system (as defined in section 1262(9) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(9))) as an electric utility referred to subparagraph (A).".

(b) EXTENSION OF PERIOD FOR TRANSFER OF OPERATIONAL CONTROL AUTHORIZED BY FERC.—Clause (ii) of section 451(i)(4)(B) is amended by striking "December 31, 2007" and inserting "the date which is 4 years after the close of the taxable year in which the transaction occurs".

(c) PROPERTY LOCATED OUTSIDE THE UNITED STATES NOT TREATED AS EXEMPT UTILITY PROPERTY.—Paragraph (5) of section 451(i) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The term 'exempt utility property' shall not include any property which is located outside the United States.".

(d) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to transactions after December 31, 2007.

(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) shall take effect as if included in section 909 of the American Jobs Creation Act of 2004.

(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) shall apply to transactions after the date of the enactment of this Act.

SEC. 106. REPEAL OF DOLLAR LIMITATION AND ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX FOR RESIDENTIAL SOLAR AND FUEL CELL PROPERTY CREDIT.

(a) REPEAL OF MAXIMUM DOLLAR LIMITATION.—

(1) IN GENERAL.—Subsection (b) of section 25D (relating to limitations) is amended to read as follows:

"(b) CERTIFICATION OF SOLAR WATER HEATING PROPERTY.—No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (e) of section 25D is amended by striking paragraph (4) and by redesignating paragraphs (5) through (9) as paragraphs (4) through (8), respectively.

(B) Paragraph (1) of section 25C(e) is amended by striking "(8), and (9)" and inserting "and (8) (and paragraph (4) as in effect before its repeal by the Renewable Energy and Energy Conservation Tax Act of 2007)".

(b) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 25D is amended to read as follows:

"(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

"(2) CARRYFORWARD OF UNUSED CREDIT.—

"(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.".

(2) CONFORMING AMENDMENTS.—

(A) Section 23(b)(4)(B) is amended by inserting "and section 25D" after "this section".

(B) Section 24(b)(3)(B) is amended by striking "and 25B" and inserting ", 25B, and 25D".

(C) Section 25B(g)(2) is amended by striking "section 23" and inserting "sections 23 and 25D".

(D) Section 26(a)(1) is amended by striking "and 25B" and inserting "25B, and 25D".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to expenditures made after the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to taxable years beginning after the date of the enactment of this Act.

(B) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (b)(2) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendments relate.

TITLE II—CONSERVATION

Subtitle A—Transportation

SEC. 201. CREDIT FOR PLUG-IN HYBRID VEHICLES.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to other credits) is amended by adding at the end the following new section:

"SEC. 30D. PLUG-IN HYBRID VEHICLES.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each qualified plug-in hybrid vehicle placed in service by the taxpayer during the taxable year.

"(b) PER VEHICLE DOLLAR LIMITATION.—

"(1) IN GENERAL.—The amount determined under this subsection with respect to any qualified plug-in hybrid vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

"(2) BASE AMOUNT.—The amount determined under this paragraph is $4,000.

"(3) BATTERY CAPACITY.—In the case of vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $200, plus $200 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $2,000.

"(c) APPLICATION WITH OTHER CREDITS.—

"(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as

a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

"(2) PERSONAL CREDIT.—

"(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

"(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

"(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the taxable year.

"(d) QUALIFIED PLUG-IN HYBRID VEHICLE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified plug-in hybrid vehicle' means a motor vehicle (as defined in section 30(c)(2))—

"(A) the original use of which commences with the taxpayer,

"(B) which is acquired for use or lease by the taxpayer and not for resale,

"(C) which is made by a manufacturer,

"(D) which has a gross vehicle weight rating of less than 14,000 pounds,

"(E) which has received a certificate of conformity under the Clean Air Act and meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

"(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

"(i) has a capacity of not less than 4 kilowatt hours, and

"(ii) is capable of being recharged from an external source of electricity, and

"(G) which either—

"(i) is also propelled to a significant extent by other than an electric motor, or

"(ii) has a significant onboard source of electricity which also recharges the battery referred to in subparagraph (F).

"(2) EXCEPTION.—The term 'qualified plug-in hybrid vehicle' shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

"(3) OTHER TERMS.—The terms 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(4) BATTERY CAPACITY.—The term 'capacity' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

"(e) LIMITATION ON NUMBER OF QUALIFIED PLUG-IN HYBRID VEHICLES ELIGIBLE FOR CREDIT.—

"(1) IN GENERAL.—In the case of a qualified plug-in hybrid vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

"(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified plug-in hybrid vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after the date of the enactment of this section, is at least 60,000.

"(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

"(A) 50 percent for the first 2 calendar quarters of the phaseout period,

"(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

"(C) 0 percent for each calendar quarter thereafter.

"(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

"(f) SPECIAL RULES.—

"(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (c)).

"(2) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

"(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

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

"(5) PROPERTY USED BY TAX-EXEMPT ENTITY; INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Rules similar to the rules of paragraphs (6) and (10) of section 30B(h) shall apply for purposes of this section.".

(b) PLUG-IN VEHICLES NOT TREATED AS NEW QUALIFIED HYBRID VEHICLES.—Section 30B(d)(3) is amended by adding at the end the following new subparagraph:

"(D) EXCLUSION OF PLUG-IN VEHICLES.—Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.".

(c) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended—

(1) by striking "and" each place it appears at the end of any paragraph,

(2) by striking "plus" each place it appears at the end of any paragraph,

(3) by striking the period at the end of paragraph (31) and inserting ", plus", and

(4) by adding at the end the following new paragraph:

"(32) the portion of the plug-in hybrid vehicle credit to which section 30D(c)(1) applies.".

(d) CONFORMING AMENDMENTS.—

(1)(A) Section 24(b)(3)(B), as amended by this Act, is amended by striking "and 25D" and inserting "25D, and 30D".

(B) Section 25(e)(1)(C)(ii) is amended by inserting "30D," after "25D,".

(C) Section 25B(g)(2), as amended by this Act, is amended by striking "and 25D" and inserting ", 25D, and 30D".

(D) Section 26(a)(1), as amended by this Act, is amended by striking "and 25D" and inserting "25D, and 30D".

(E) Section 1400C(d)(2) is amended by striking "and 25D" and inserting "25D, and 30D".

(2) Section 1016(a) is amended by striking "and" at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting ", and", and by adding at the end the following new paragraph:

"(38) to the extent provided in section 30D(f)(1).".

(3) Section 6501(m) is amended by inserting "30D(f)(4)," after "30C(e)(5),".

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 30D. Plug-in hybrid vehicles.".

(e) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS A PERSONAL CREDIT.—

(1) IN GENERAL.—Paragraph (2) of section 30B(g) is amended to read as follows:

"(2) PERSONAL CREDIT.—The credit allowed under subsection (a) for any taxable year (after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 30C(d)(2) is amended by striking "sections 27, 30, and 30B" and inserting "sections 27 and 30".

(B) Paragraph (3) of section 55(c) is amended by striking "30B(g)(2),".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) TREATMENT OF ALTERNATIVE MOTOR VEHICLE CREDIT AS PERSONAL CREDIT.—The amendments made by subsection (e) shall apply to taxable years beginning after December 31, 2006.

(g) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) shall be subject to title IX of the Economic Growth and Tax Relief Rec-

onciliation Act of 2001 in the same manner as the provision of such Act to which such amendment relates.

SEC. 202. EXTENSION AND MODIFICATION OF ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

(a) INCREASE IN CREDIT AMOUNT.—Section 30C (relating to alternative fuel vehicle refueling property credit) is amended—

(1) by striking "30 percent" in subsection (a) and inserting "50 percent", and

(2) by striking "$30,000" in subsection (b)(1) and inserting "$50,000".

(b) EXTENSION OF CREDIT.—Paragraph (2) of section 30C(g) (relating to termination) is amended by striking "December 31, 2009" and inserting "December 31, 2010".

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

SEC. 203. EXTENSION AND MODIFICATION OF CREDITS FOR BIODIESEL AND RENEWABLE DIESEL.

(a) IN GENERAL.—Sections 40A(g), 6426(c)(6), and 6427(e)(5)(B) are each amended by striking "December 31, 2008" and inserting "December 31, 2010".

(b) UNIFORM TREATMENT OF DIESEL PRODUCED FROM BIOMASS.—Paragraph (3) of section 40A(f) is amended—

(1) by striking "using a thermal depolymerization process", and

(2) by striking "or D396" in subparagraph (B) and inserting "or other equivalent standard approved by the Secretary for fuels to be used in diesel-powered highway vehicles".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel produced, and sold or used, after the date of the enactment of this Act.

(2) UNIFORM TREATMENT OF DIESEL PRODUCED FROM BIOMASS.—The amendments made by subsection (b) shall apply to fuel produced, and sold or used, after the date which is 30 days after the date of the enactment of this Act.

SEC. 204. CREDIT FOR PRODUCTION OF CELLULOSIC ALCOHOL.

(a) IN GENERAL.—Subsection (b) of section 40 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) CELLULOSIC ALCOHOL FUEL PRODUCER CREDIT.—

"(A) IN GENERAL.—The cellulosic alcohol fuel producer credit of any cellulosic alcohol fuel producer for any taxable year is 50 cents for each gallon of qualified cellulosic fuel production of such producer.

"(B) QUALIFIED CELLULOSIC FUEL PRODUCTION.—For purposes of this paragraph, the term 'qualified cellulosic fuel production' means any cellulosic alcohol which is produced by a cellulosic alcohol fuel producer, and which during the taxable year—

"(i) is sold by such producer to another person—

"(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

"(II) for use by such other person as a fuel in a trade or business, or

"(III) who sells such alcohol at retail to another person and places such alcohol in the fuel tank of such other person, or

"(ii) is used or sold by such producer for any purpose described in clause (i).

"(C) CELLULOSIC ALCOHOL.—For purposes of this paragraph, the term 'cellulosic alcohol' means any alcohol which—

"(i) is produced in the United States for use as a fuel in the United States, and

"(ii) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

For purposes of this subparagraph, the term 'United States' includes any possession of the United States.

"(D) CELLULOSIC ALCOHOL FUEL PRODUCER.—For purposes of this paragraph, the term 'cellulosic alcohol fuel producer' means any person who produces cellulosic alcohol in a trade or business and is registered with the Secretary as a cellulosic alcohol fuel producer.

"(E) ADDITIONAL DISTILLATION EXCLUDED.—The qualified cellulosic fuel production of any producer for any taxable year shall not include any alco-

hol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 40 is amended by striking "plus" at the end of paragraph (1), by striking "plus" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", plus", and by adding at the end the following new paragraph:

"(4) in the case of a cellulosic alcohol fuel producer, the cellulosic alcohol fuel producer credit.".

(2) Clause (ii) of section 40(d)(3)(C) is amended by striking "subsection (b)(4)(B)" and inserting "paragraph (4)(B) or (5)(B) of subsection (b)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to alcohol produced after December 31, 2007.

SEC. 205. EXTENSION OF TRANSPORTATION FRINGE BENEFIT TO BICYCLE COMMUTERS.

(a) IN GENERAL.—Paragraph (1) of section 132(f) of the Internal Revenue Code of 1986 (relating to general rule for qualified transportation fringe) is amended by adding at the end the following:

"(D) Any qualified bicycle commuting reimbursement.".

(b) LIMITATION ON EXCLUSION.—Paragraph (2) of section 132(f) of such Code is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.".

(c) DEFINITIONS.—Paragraph (5) of section 132(f) of such Code (relating to definitions) is amended by adding at the end the following:

"(F) DEFINITIONS RELATED TO BICYCLE COMMUTING REIMBURSEMENT.—

"(i) QUALIFIED BICYCLE COMMUTING REIMBURSEMENT.—The term 'qualified bicycle commuting reimbursement' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

"(ii) APPLICABLE ANNUAL LIMITATION.—The term 'applicable annual limitation' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

"(iii) QUALIFIED BICYCLE COMMUTING MONTH.—The term 'qualified bicycle commuting month' means, with respect to any employee, any month during which such employee—

"(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

"(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).".

(d) CONSTRUCTIVE RECEIPT OF BENEFIT.—Paragraph (4) of section 132(f) is amended by inserting "(other than a qualified bicycle commuting reimbursement)" after "qualified transportation fringe".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 206. MODIFICATION OF LIMITATION ON AUTOMOBILE DEPRECIATION.

(a) IN GENERAL.—Paragraph (5) of section 280F(d) of the Internal Revenue Code of 1986 (defining passenger automobile) is amended to read as follows:

"(5) PASSENGER AUTOMOBILE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'passenger automobile' means any 4-wheeled vehicle—

"(i) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails), and

"(ii) which is rated at not more than 14,000 pounds gross vehicle weight.

"(B) EXCEPTIONS.—The term 'passenger automobile' shall not include—

"(i) any exempt-design vehicle, and

"(ii) any exempt-use vehicle.

"(C) EXEMPT-DESIGN VEHICLE.—The term 'exempt-design vehicle' means—

"(i) any vehicle which, by reason of its nature or design, is not likely to be used more than a de minimis amount for personal purposes, and

"(ii) any vehicle—

"(I) which is designed to have a seating capacity of more than 9 persons behind the driver's seat,

"(II) which is equipped with a cargo area of at least 5 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

"(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

"(D) EXEMPT-USE VEHICLE.—The term 'exempt-use vehicle' means—

"(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

"(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

"(iii) any truck or van if substantially all of the use of such vehicle by the taxpayer is directly in—

"(I) a farming business (within the meaning of section 263A(e)(4)),

"(II) the transportation of a substantial amount of equipment, supplies, or inventory, or

"(III) the moving or delivery of property which requires substantial cargo capacity.

"(E) RECAPTURE.—In the case of any vehicle which is not a passenger automobile by reason of being an exempt-use vehicle, if such vehicle ceases to be an exempt-use vehicle in any taxable year after the taxable year in which such vehicle is placed in service, a rule similar to the rule of subsection (b) shall apply.".

(b) CONFORMING AMENDMENT.—Section 179(b) of such Code (relating to limitations) is amended by striking paragraph (6).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2007.

SEC. 207. RESTRUCTURING OF NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—Part I of subchapter Y of chapter 1 is amended by redesignating section 1400L as section 1400K and by adding at the end the following new section:

"SEC. 1400L. NEW YORK LIBERTY ZONE TAX CREDITS.

"(a) IN GENERAL.—In the case of a New York Liberty Zone governmental unit, there shall be allowed as a credit against any taxes imposed for any payroll period by section 3402 for which such governmental unit is liable under section 3403 an amount equal to so much of the portion of the qualifying project expenditure amount allocated under subsection (b)(3) to such governmental unit for the calendar year as is allocated by such governmental unit to such period under subsection (b)(4).

"(b) QUALIFYING PROJECT EXPENDITURE AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying project expenditure amount' means, with respect to any calendar year, the sum of—

"(A) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, New York, and

"(B) any such expenditures—

"(i) paid or incurred in any preceding calendar year which begins after the date of enactment of this section, and

"(ii) not previously allocated under paragraph (3).

"(2) QUALIFYING PROJECT.—The term 'qualifying project' means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400K(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

"(3) GENERAL ALLOCATION.—

"(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying project ex-

penditure amount which may be taken into account by such governmental unit under subsection (a) for any calendar year in the credit period.

"(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

"(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

"(i) $169,000,000, plus

"(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

"(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate to New York Liberty Zone governmental units for any calendar year in the 5-year period following the credit period an amount equal to—

"(i) the lesser of—

"(I) such excess, or

"(II) the qualifying project expenditure amount for such calendar year, reduced by

"(ii) the aggregate amount allocated under this subparagraph for all preceding calendar years.

"(4) ALLOCATION TO PAYROLL PERIODS.—Each New York Liberty Zone governmental unit which has been allocated a portion of the qualifying project expenditure amount under paragraph (3) for a calendar year may allocate such portion to payroll periods beginning in such calendar year as such governmental unit determines appropriate.

"(c) CARRYOVER OF UNUSED ALLOCATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the amount allocated under subsection (b)(3) to a New York Liberty Zone governmental unit for any calendar year exceeds the aggregate taxes imposed by section 3402 for which such governmental unit is liable under section 3403 for periods beginning in such year, such excess shall be carried to the succeeding calendar year and added to the allocation of such governmental unit for such succeeding calendar year.

"(2) REALLOCATION.—If a New York Liberty Zone governmental unit does not use an amount allocated to it under subsection (b)(3) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(3) in the same manner as if it had never been allocated.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CREDIT PERIOD.—The term 'credit period' means the 12-year period beginning on January 1, 2008.

"(2) NEW YORK LIBERTY ZONE GOVERNMENTAL UNIT.—The term 'New York Liberty Zone governmental unit' means—

"(A) the State of New York,

"(B) the City of New York, New York, and

"(C) any agency or instrumentality of such State or City.

"(3) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

"(4) TREATMENT OF CREDIT AMOUNTS FOR PURPOSES OF WITHHOLDING TAXES.—For purposes of this title, a New York Liberty Zone governmental unit shall be treated as having paid to the Secretary, on the day on which wages are paid to employees, an amount equal to the amount of the credit allowed to such entity under subsection (a) with respect to such wages, but only if such governmental unit deducts and withholds wages for such payroll period under section 3401 (relating to wage withholding).

"(e) REPORTING.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly submit to the Secretary an annual report—

"(1) which certifies—

"(A) the qualifying project expenditure amount for the calendar year, and

"(B) the amount allocated to each New York Liberty Zone governmental unit under subsection (b)(3) for the calendar year, and

"(2) includes such other information as the Secretary may require to carry out this section.

"(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to ensure compliance with the purposes of this section."

(b) TERMINATION OF SPECIAL ALLOWANCE AND EXPENSING.—Subparagraph (A) of section 1400K(b)(2), as redesignated by subsection (a), is amended by striking the parenthetical therein and inserting "(in the case of nonresidential real property and residential rental property, the date of the enactment of the Renewable Energy and Energy Conservation Tax Act of 2007 or, if acquired pursuant to a binding contract in effect on such enactment date, December 31, 2009)".

(c) CONFORMING AMENDMENTS.—

(1) Section 38(c)(3)(B) is amended by striking "section 1400L(a)" and inserting "section 1400K(a)".

(2) Section 168(k)(2)(D)(ii) is amended by striking "section 1400L(c)(2)" and inserting "section 1400K(c)(2)".

(3) The table of sections for part I of subchapter Y of chapter 1 is amended by redesignating the item relating to section 1400L as an item relating to section 1400K and by inserting after such item the following new item:

"Sec. 1400L. New York Liberty Zone tax credits.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Other Conservation Provisions

SEC. 211. QUALIFIED ENERGY CONSERVATION BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1, as added by section 104, is amended by adding at the end the following new section:

"SEC. 54C. QUALIFIED ENERGY CONSERVATION BONDS.

"(a) QUALIFIED ENERGY CONSERVATION BOND.—For purposes of this subchapter, the term 'qualified energy conservation bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

"(2) the bond is issued by a State or local government, and

"(3) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $3,600,000,000.

"(d) ALLOCATIONS.—

"(1) IN GENERAL.—The limitation applicable under subsection (c) shall be allocated by the Secretary among the States in proportion to the population of the States.

"(2) ALLOCATIONS TO LARGEST LOCAL GOVERNMENTS.—

"(A) IN GENERAL.—In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

"(B) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

"(C) LARGE LOCAL GOVERNMENT.—For purposes of this section, the term 'large local government' means any municipality or county if such municipality or county has a population of 100,000 or more.

"(3) ALLOCATION TO ISSUERS; RESTRICTION ON PRIVATE ACTIVITY BONDS.—Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

"(e) QUALIFIED CONSERVATION PURPOSE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified conservation purpose' means any of the following:

"(A) Capital expenditures incurred for purposes of—

"(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

"(ii) implementing green community programs, or

"(iii) rural development involving the production of electricity from renewable energy resources.

"(B) Expenditures with respect to research facilities, and research grants, to support research in—

"(i) development of cellulosic ethanol or other nonfossil fuels,

"(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

"(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

"(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

"(v) technologies to reduce energy use in buildings.

"(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

"(D) Demonstration projects designed to promote the commercialization of—

"(i) green building technology,

"(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

"(iii) advanced battery manufacturing technologies,

"(iv) technologies to reduce peak use of electricity, or

"(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

"(E) Public education campaigns to promote energy efficiency.

"(2) SPECIAL RULES FOR PRIVATE ACTIVITY BONDS.—For purposes of this section, in the case of any private activity bond, the term 'qualified conservation purposes' shall not include any expenditure which is not a capital expenditure.

"(f) POPULATION.—

"(1) IN GENERAL.—The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

"(2) SPECIAL RULE FOR COUNTIES.—In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

"(g) APPLICATION TO INDIAN TRIBAL GOVERNMENTS.—An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

"(1) an Indian tribal government shall be treated for purposes of subsection (d) as located within a State to the extent of so much of the population of such government as resides within such State, and

"(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d), as added by section 104, is amended to read as follows:

"(1) QUALIFIED TAX CREDIT BOND.—The term 'qualified tax credit bond' means—

"(A) a new clean renewable energy bond, or

"(B) a qualified energy conservation bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), and (5).".

(2) Subparagraph (C) of section 54A(d)(2), as added by section 104, is amended to read as follows:

"(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means—

"(i) in the case of a new clean renewable energy bond, a purpose specified in section 54B(a)(1), and

"(ii) in the case of a qualified energy conservation bond, a purpose specified in section 54C(a)(1).".

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 54C. Qualified energy conservation bonds.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 212. QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE BONDS.

(a) IN GENERAL.—Subpart I of part IV of subchapter A of chapter 1 (as amended by this Act) is amended by adding at the end the following new section:

"SEC. 54D. QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE BONDS.

"(a) QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE BOND.—For purposes of this subchapter, the term 'qualified residential energy efficiency assistance bond' means any bond issued as part of an issue if—

"(1) 100 percent of the available project proceeds of such issue are to be used for 1 or more qualified residential energy efficiency assistance purposes,

"(2) not less than 20 percent of the available project proceeds of such issue are to be used for 1 or more qualified low-income residential energy efficiency assistance purposes,

"(3) repayments of principal and applicable interest on financing provided by the issue are used not later than the close of the 3-month period beginning on the date the prepayment (or complete repayment) is received to redeem bonds which are part of the issue or to provide for 1 or more qualified residential energy efficiency assistance purposes,

"(4) the bond is issued by a State, and

"(5) the issuer designates such bond for purposes of this section.

"(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) to such issuer.

"(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $2,400,000,000.

"(d) LIMITATION ALLOCATED AMONG STATES.—The limitation under subsection (c) shall be allocated by the Secretary among the States in proportion to the population of the States.

"(e) QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE PURPOSE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified residential energy efficiency assistance purpose' means any grant or low-interest loan to acquire (including reasonable installation costs)—

"(A) any property which meets (at a minimum) the requirements of the Energy Star program and which is to be installed in a dwelling unit,

"(B) any property which uses wind, solar, or geothermal energy or qualified fuel cell property (as defined in section 48(c)(1)) to generate electricity, or to heat or cool water, for use in a dwelling unit (other than property described in section 25D(e)(3)), and

"(C) any improvements to a dwelling unit which are made pursuant to a plan certified by an energy efficiency expert that such improvement will yield at least a 20 percent reduction in total household energy consumption related to heating, cooling, lighting, and appliances.

"(2) GEOTHERMAL HEAT PUMP.—Any geothermal heat pump to provide heating or cooling in a dwelling unit described in paragraph (1)(B) shall be treated as described in paragraph (1)(B).

"(3) DOLLAR LIMITATIONS.—

"(A) IN GENERAL.—Such term shall not include any grant or loan for improvements described in paragraph (1)(C) with respect to any dwelling unit to the extent that such grant or loan (when added to all other grants or loans for such improvements) exceeds $5,000.

"(B) INCREASED LIMITATION FOR CERTAIN PRINCIPAL RESIDENCES.—In the case of a dwelling unit which is used as a principal residence (within the meaning of section 121) by the recipient of the grant or loan referred to in subparagraph (A)—

"(i) subparagraph (A) shall be applied by substituting '$12,000' for '$5,000' if such grant or loan would satisfy the requirements of paragraph (1)(A) if such paragraph were applied by substituting '50 percent' for '20 percent', and

"(ii) in any case to which clause (i) does not apply, subparagraph (A) shall be applied by substituting '$8,000' for '$5,000' if such grant or loan would satisfy the requirements of paragraph (1)(A) if such paragraph were applied by substituting '35 percent' for '20 percent'.

"(4) LOW-INTEREST LOAN.—The term 'low interest loan' means any loan which charges interest at a rate which does not exceed the applicable Federal rate in effect under section 1288(b)(1) determined as of the issuance of the loan.

"(5) EXCLUSION OF CERTAIN PROPERTY.—The following property shall not be taken into account for purposes of paragraph (1)(A):

"(A) Any equipment used in connection with a swimming pool, hot tub, or similar property.

"(B) Any television.

"(C) Any device for converting digital signal to analog.

"(D) Any DVD player.

"(E) Any video cassette recorder (VCR).

"(F) Any audio equipment.

"(G) Any cordless phone.

"(H) Any other item of property where there is substantial recreational use.

"(f) QUALIFIED LOW-INCOME RESIDENTIAL EFFICIENCY ASSISTANCE PURPOSE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified low-income residential energy efficiency assistance purpose' means any qualified residential energy efficiency assistance purpose with respect to a dwelling unit which is occupied (at the time of the grant or loan) by individuals whose income is 50 percent or less of area median gross income. Rules similar to the rules of section 142(d)(2)(B) shall apply for purposes of this paragraph.

"(2) RESTRICTION TO GRANTS.—Such term shall not include any loan.

"(g) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE INTEREST.—The term 'applicable interest' means, with respect to any loan, so much of any interest on such loan which exceeds 1 percentage point.

"(2) SPECIAL RULE RELATING TO ARBITRAGE.—An issue shall not be treated as failing to meet the requirements of section 54A(d)(4)(A) by reason of any investment of available project proceeds in 1 or more qualified residential energy efficiency assistance purposes.

"(3) POPULATION.—The population of any State or local government shall be determined as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

"(4) REPORTING.—

"(A) REPORTS BY ISSUERS.—Issuers of qualified residential energy efficiency assistance bonds shall, not later than 6 months after the expenditure period (as defined in section 54A) and annually thereafter until the last such bond is redeemed, submit reports to the Secretary regarding such bonds, including information regarding—

"(i) the number and monetary value of loans and grants provided and the purposes for which provided,

"(ii) the number of dwelling units the energy efficiency of which improved as result of such loans and grants,

"(iii) the types of property described in subsection (e)(1)(A) installed as a result of such loans and grants and the projected energy savings with respect to such property,

"(iv) the types of property described in subsection (e)(1)(B) installed as a result of such loans and grants and the projected production of such property, and

"(v) the projected energy savings as a result of such loans and grants for improvements described in subsection (e)(1)(C).

"(B) REPORT TO CONGRESS.—Not later than 12 months after receipt of the first report under subparagraph (A) and annually thereafter until the last such report is required to be submitted, the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit a report to Congress regarding the bond program under this section, including information regarding—

"(i) the aggregate of each category of information described in subparagraph (A) (including any independent assessment of projected energy savings), and

"(ii) an estimate of the amount of greenhouse gas emissions reduced as a result of such bond program.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 54A(d), as added by section 104 and amended by section 211, is amended by striking "or" at the end of subparagraph (A), by inserting "or" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

"(C) a qualified residential energy efficiency assistance bond,".

(2) Subparagraph (C) of section 54A(d)(2), as added by section 104 and amended by section 211, is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) in the case of a qualified residential energy efficiency assistance bond, a purpose specified in section 54D(a)(1).".

(3) The table of sections for subpart I of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 54D. Qualified residential energy efficiency assistance bonds.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 213. EXTENSION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

Subsection (h) of section 179D (relating to termination) is amended by striking "December 31, 2008" and inserting "December 31, 2013".

SEC. 214. MODIFICATIONS OF ENERGY EFFICIENT APPLIANCE CREDIT FOR APPLIANCES PRODUCED AFTER 2007.

(a) IN GENERAL.—Subsection (b) of section 45M (relating to applicable amount) is amended to read as follows:

"(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

"(1) DISHWASHERS.—The applicable amount is—

"(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

"(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

"(2) CLOTHES WASHERS.—The applicable amount is—

"(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

"(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

"(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009 or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

"(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

"(3) REFRIGERATORS.—The applicable amount is—

"(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

"(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

"(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009 or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

"(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009 or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.

"(4) DEHUMIDIFIERS.—The applicable amount is—

"(A) $15 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity less than or equal to 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012, and

"(B) $25 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity greater than 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012.".

(b) ELIGIBLE PRODUCTION.—

(1) SIMILAR TREATMENT FOR ALL APPLIANCES.—Subsection (c) of section 45M (relating to eligible production) is amended—

(A) by striking paragraph (2),

(B) by striking "(1) IN GENERAL" and all that follows through "the eligible" and inserting "The eligible", and

(C) by moving the text of such subsection in line with the subsection heading and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(2) MODIFICATION OF BASE PERIOD.—Paragraph (2) of section 45M(c), as amended by paragraph (1) of this section, is amended by striking "3-calendar year" and inserting "2-calendar year".

(c) TYPES OF ENERGY EFFICIENT APPLIANCES.—Subsection (d) of section 45M (defining types of energy efficient appliances) is amended to read as follows:

"(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

"(1) dishwashers described in subsection (b)(1),

"(2) clothes washers described in subsection (b)(2),

"(3) refrigerators described in subsection (b)(3), and

"(4) dehumidifiers described in subsection (b)(4).".

(d) AGGREGATE CREDIT AMOUNT ALLOWED.—

(1) INCREASE IN LIMIT.—Paragraph (1) of section 45M(e) (relating to aggregate credit amount allowed) is amended to read as follows:

"(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.".

(2) EXCEPTION FOR CERTAIN REFRIGERATOR AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended to read as follows:

"(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).".

(e) QUALIFIED ENERGY EFFICIENT APPLIANCES.—

(1) IN GENERAL.—Paragraph (1) of section 45M(f) (defining qualified energy efficient appliance) is amended to read as follows:

"(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

"(A) any dishwasher described in subsection (b)(1),

"(B) any clothes washer described in subsection (b)(2),

"(C) any refrigerator described in subsection (b)(3), and

"(D) any dehumidifier described in subsection (b)(4).".

(2) CLOTHES WASHER.—Section 45M(f)(3) (defining clothes washer) is amended by inserting "commercial" before "residential" the second place it appears.

(3) TOP-LOADING CLOTHES WASHER.—Subsection (f) of section 45M (relating to definitions) is amended by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) TOP-LOADING CLOTHES WASHER.—The term 'top-loading clothes washer' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.".

(4) DEHUMIDIFIER.—Subsection (f) of section 45M, as amended by paragraph (3), is amended by redesignating paragraphs (6), (7), and (8) as paragraphs (7), (8) and (9), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) DEHUMIDIFIER.—The term 'dehumidifier' means a self-contained, electrically operated, and mechanically refrigerated encased assembly consisting of—

"(A) a refrigerated surface that condenses moisture from the atmosphere,

"(B) a refrigerating system, including an electric motor,

"(C) an air-circulating fan, and

"(D) means for collecting or disposing of condensate.".

(5) REPLACEMENT OF ENERGY FACTOR.—Section 45M(f)(7), as amended by paragraph (4), is amended to read as follows:

"(7) MODIFIED ENERGY FACTOR.—The term 'modified energy factor' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.".

(6) GALLONS PER CYCLE; WATER CONSUMPTION FACTOR.—Section 45M(f) (relating to definitions) is amended by adding at the end the following:

"(10) GALLONS PER CYCLE.—The term 'gallons per cycle' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

"(11) WATER CONSUMPTION FACTOR.—The term 'water consumption factor' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007.

SEC. 215. FIVE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(B) (relating to 5-year property) is amended by striking "and" at the end of clause (v), by striking the period at the end of clause (vi) and inserting ", and", and by inserting after clause (vi) the following new clause:

"(vii) any qualified energy management device.".

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

"(18) QUALIFIED ENERGY MANAGEMENT DEVICE.—

"(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is installed on real property of a customer of the taxpayer and is placed in service by a taxpayer who—

"(i) is a supplier of electric energy or a provider of electric energy services, and

"(ii) provides all commercial and residential customers of such supplier or provider with net metering upon the request of such customer.

"(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

"(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

"(ii) provides for the exchange of information between supplier or provider and the customer's energy management device in support of time-based rates or other forms of demand response, and

"(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically.

"(C) NET METERING.—For purposes of subparagraph (A), the term 'net metering' means allowing customers a credit for providing electricity to the supplier or provider.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

TITLE III—REVENUE PROVISIONS

Subtitle A—Denial of Oil and Gas Tax Benefits

SEC. 301. DENIAL OF DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, NATURAL GAS, OR PRIMARY PRODUCTS THEREOF.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) (relating to exceptions) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by inserting after clause (iii) the following new clause:

"(iv) the sale, exchange, or other disposition of oil, natural gas, or any primary product thereof.".

(b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is amended by adding at the end the following flush sentence:

"For purposes of clause (iv), the term 'primary product' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.".

(c) CONFORMING AMENDMENTS.—Section 199(c)(4) is amended—

(1) in subparagraph (A)(i)(III) by striking "electricity, natural gas," and inserting "electricity", and

(2) in subparagraph (B)(ii) by striking "electricity, natural gas," and inserting "electricity".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 302. 7-YEAR AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR CERTAIN MAJOR INTEGRATED OIL COMPANIES.

(a) IN GENERAL.—Subparagraph (A) of section 167(h)(5) (relating to special rule for major integrated oil companies) is amended by striking "5-year" and inserting "7-year".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 303. CLARIFICATION OF DETERMINATION OF FOREIGN OIL AND GAS EXTRACTION INCOME.

(a) IN GENERAL.—Paragraph (1) of section 907(c) is amended by redesignating subparagraph (B) as subparagraph (C), by striking "or" at the end of subparagraph (A), and by inserting after subparagraph (A) the following new subparagraph:

"(B) so much of any transportation of such minerals as occurs before the fair market value event, or".

(b) FAIR MARKET VALUE EVENT.—Subsection (c) of section 907 is amended by adding at the end the following new paragraph:

"(6) FAIR MARKET VALUE EVENT.—For purposes of this section, the term 'fair market value event' means, with respect to any mineral, the first point in time at which such mineral—

"(A) has a fair market value which can be determined on the basis of a transfer, which is an arm's length transaction, of such mineral from the taxpayer to a person who is not related (within the meaning of section 482) to such taxpayer, or

"(B) is at a location at which the fair market value is readily ascertainable by reason of transactions among unrelated third parties with respect to the same mineral (taking into account source, location, quality, and chemical composition).".

(c) SPECIAL RULE FOR CERTAIN PETROLEUM TAXES.—Subsection (c) of section 907, as amended by subsection (b), is amended to by adding at the end the following new paragraph:

"(7) OIL AND GAS TAXES.—In the case of any tax imposed by a foreign country which is limited in its application to taxpayers engaged in oil or gas activities—

"(A) the term 'oil and gas extraction taxes' shall include such tax,

"(B) the term 'foreign oil and gas extraction income' shall include any taxable income which is taken into account in determining such tax (or is directly attributable to the activity to which such tax relates), and

"(C) the term 'foreign oil related income' shall not include any taxable income which is treated as foreign oil and gas extraction income under subparagraph (B).".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 907(c)(1), as redesignated by this section, is amended by inserting "or used by the taxpayer in the activity described in subparagraph (B)" before the period at the end.

(2) Subparagraph (B) of section 907(c)(2) is amended to read as follows:

"(B) so much of the transportation of such minerals or primary products as is not taken into account under paragraph (1)(B),".

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

Subtitle B—Clarification of Eligibility for Certain Fuel Credits

SEC. 311. CLARIFICATION OF ELIGIBILITY FOR RENEWABLE DIESEL CREDIT.

(a) COPRODUCTION WITH PETROLEUM FEEDSTOCK.—

(1) IN GENERAL.—Paragraph (3) of section 40A(f) (defining renewable diesel) is amended by adding at the end the following flush sentence:

"Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3).".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 40A(f) is amended by striking "(as defined in section 45K(c)(3))".

(b) CLARIFICATION OF ELIGIBILITY FOR ALTERNATIVE FUEL CREDIT.—

(1) IN GENERAL.—Subparagraph (F) of section 6426(d)(2) is amended by striking "hydrocarbons" and inserting "fuel".

(2) CONFORMING AMENDMENT.—Section 6426 is amended by adding at the end the following new subsection:

"(h) DENIAL OF DOUBLE BENEFIT.—No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel produced, and sold or used, after June 30, 2007.

(2) CLARIFICATION OF ELIGIBILITY FOR ALTERNATIVE FUEL CREDIT.—The amendment made by subsection (b) shall take effect as if included in section 11113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

SEC. 312. CLARIFICATION THAT CREDITS FOR FUEL ARE DESIGNED TO PROVIDE AN INCENTIVE FOR UNITED STATES PRODUCTION.

(a) BIODIESEL FUELS CREDIT.—Paragraph (5) of section 40A(d), as added by subsection (c), is amended to read as follows:

"(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel unless—

"(A) such biodiesel is produced in the United States for use as a fuel in the United States, and

"(B) the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the location of such production.

For purposes of this paragraph, the term 'United States' includes any possession of the United States.".

(b) EXCISE TAX CREDIT.—Paragraph (2) of section 6426(i), as added by subsection (c), is amended to read as follows:

"(2) BIODIESEL AND ALTERNATIVE FUELS.—No credit shall be determined under this section with respect to any biodiesel or alternative fuel unless—

"(A) such biodiesel or alternative fuel is produced in the United States for use as a fuel in the United States, and

"(B) the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of such biodiesel or alternative fuel which identifies the product produced and the location of such production.".

(c) PROVISIONS CLARIFYING TREATMENT OF FUELS WITH NO NEXUS TO THE UNITED STATES.—

(1) ALCOHOL FUELS CREDIT.—Subsection (d) of section 40 is amended by adding at the end the following new paragraph:

"(6) LIMITATION TO ALCOHOL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term 'United States' includes any possession of the United States.".

(2) BIODIESEL FUELS CREDIT.—Subsection (d) of section 40A is amended by adding at the end the following new paragraph:

"(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term 'United States' includes any possession of the United States.".

(3) EXCISE TAX CREDIT.—

(A) IN GENERAL.—Section 6426, as amended by section 311, is amended by adding at the end the following new subsection:

"(i) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—

"(1) ALCOHOL.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

"(2) BIODIESEL AND ALTERNATIVE FUELS.—No credit shall be determined under this section with respect to any biodiesel or alternative fuel which is produced outside the United States for use as a fuel outside the United States.

For purposes of this subsection, the term 'United States' includes any possession of the United States.".

(B) CONFORMING AMENDMENT.—Subsection (e) of section 6427 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel if credit is not allowed with respect to such mixture or alternative fuel by reason of section 6426(i).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to fuel produced, and sold or used, after the date of the enactment of this Act.

(2) PROVISIONS CLARIFYING TREATMENT OF FUELS WITH NO NEXUS TO THE UNITED STATES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsection (c) shall take effect as if included in section 301 of the American Jobs Creation Act of 2004.

(B) ALTERNATIVE FUEL CREDITS.—So much of the amendments made by subsection (c) as relate to the alternative fuel credit or the alternative fuel mixture credit shall take effect as if included in section 11113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

(C) RENEWABLE DIESEL.—So much of the amendments made by subsection (c) as relate to renewable diesel shall take effect as if included in section 1346 of the Energy Policy Act of 2005.

TITLE IV—OTHER PROVISIONS

Subtitle A—Studies

SEC. 401. CARBON AUDIT OF THE TAX CODE.

(a) STUDY.—The Secretary of the Treasury shall enter into an agreement with the National Academy of Sciences to undertake a comprehensive review of the Internal Revenue Code of 1986 to identify the types of and specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the National Academy of Sciences shall submit to Congress a report containing the results of study authorized under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,500,000 for the period of fiscal years 2008 and 2009.

SEC. 402. COMPREHENSIVE STUDY OF BIOFUELS.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Agriculture, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, shall enter into an agreement with the National Academy of Sciences to produce an analysis of current scientific findings to determine—

(1) current biofuels production, as well as projections for future production,

(2) the maximum amount of biofuels production capable on United States farmland,

(3) the domestic effects of a dramatic increase in biofuels production on, for example—

(A) the price of fuel,

(B) the price of land in rural and suburban communities,

(C) crop acreage and other land use,

(D) the environment, due to changes in crop acreage, fertilizer use, runoff, water use, emissions from vehicles utilizing biofuels, and other factors,

(E) the price of feed,

(F) the selling price of grain crops,

(G) exports and imports of grains,

(H) taxpayers, through cost or savings to commodity crop payments, and

(I) the expansion of refinery capacity,

(4) the ability to convert corn ethanol plants for other uses, such as cellulosic ethanol or biodiesel,

(5) a comparative analysis of corn ethanol versus other biofuels and renewable energy sources, considering cost, energy output, and ease of implementation, and

(6) the need for additional scientific inquiry, and specific areas of interest for future research.

(b) REPORT.—The National Academy of Sciences shall submit an initial report of the findings of the report required under subsection (a) to the Congress not later

than 3 months after the date of the enactment of this Act, and a final report not later than 6 months after such date of enactment.

Subtitle B—Application of Certain Labor Standards on Projects Financed Under Tax Credit Bonds

SEC. 411. APPLICATION OF CERTAIN LABOR STANDARDS ON PROJECTS FINANCED UNDER TAX CREDIT BONDS.

Subchapter IV of chapter 31 of title 40, United States Code, shall apply to projects financed with the proceeds of any tax credit bond (as defined in section 54A of the Internal Revenue Code of 1986).

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

The bill, H.R. 2776, as amended (the "Renewable Energy and Energy Conservation Tax Act of 2007"), provides incentives to promote the use of renewable energy and to encourage energy conservation and for other purposes.

B. Background and Need for Legislation

Climate change and energy security are a concern of this Congress. Promoting the use of renewable energy and encouraging energy conservation will help reduce the impact of energy consumption on climate change and reduce the reliance of the United States on imported fossil fuels.

C. Legislative History

The Committee on Ways and Means held hearings on energy and tax policy, focusing on climate change, on February 28, 2007. The Subcommittee on Select Revenue Measures held hearings on April 19, 2007, and on April 24, 2007, on tax incentives for alternative sources of energy and on Member proposals on energy tax incentives.

The Committee on Ways and Means marked up the provisions of the bill on June 20, 2007, and reported the provisions, as amended, on June 20, 2007, by a roll call vote, with a quorum present.

II. EXPLANATION OF THE BILL

TITLE I—PRODUCTION INCENTIVES

A. Extension and Modification of the Credit for the Production of Electricity From Renewable Resources (Sec. 101 of the Bill and Sec. 45 of the Code)

PRESENT LAW

In general

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities.[1] Qualified en-

[1] Sec. 45. In addition to the electricity production credit, section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities. Except where

Continued

ergy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

Credit amounts and credit period

In general

The base amount of the electricity production credit is 1.5 cents per kilowatt-hour (indexed annually for inflation) of electricity produced. The amount of the credit is 2 cents per kilowatt-hour for 2007. A taxpayer may generally claim a credit during the 10-year period commencing with the date the qualified facility is placed in service. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

Credit phaseout

The amount of credit a taxpayer may claim is phased out as the market price of electricity exceeds certain threshold levels. The electricity production credit is reduced over a 3 cent phaseout range to the extent the annual average contract price per kilowatt-hour of electricity sold in the prior year from the same qualified energy resource exceeds 8 cents (adjusted for inflation; 10.7 cents for 2007).

Reduced credit periods and credit amounts

Generally, in the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities placed in service before August 8, 2005, the 10-year credit period is reduced to five years commencing on the date the facility was originally placed in service. However, for qualified open-loop biomass facilities (other than a facility described in sec. 45(d)(3)(A)(i) that uses agricultural livestock waste nutrients) placed in service before October 22, 2004, the five-year period commences on January 1, 2005. In the case of a closed-loop biomass facility modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period begins no earlier than October 22, 2004.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities the otherwise allowable credit amount is 0.75 cent per kilowatt-hour, indexed for inflation measured after 1992 (currently 1 cent per kilowatt-hour for 2007).

Other limitations on credit claimants and credit amounts

In general, in order to claim the credit, a taxpayer must own the qualified facility and sell the electricity produced by the facility to an unrelated party. A lessee or operator may claim the credit in

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otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities and in the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee or operator of a facility owned by a governmental unit.

For all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the amount of credit a taxpayer may claim is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but the reduction cannot exceed 50 percent of the otherwise allowable credit. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit for electricity produced from renewable sources is a component of the general business credit.[2] Generally, the general business credit for any taxable year may not exceed the amount by which the taxpayer's net income tax exceeds the greater of the tentative minimum tax or so much of the net regular tax liability as exceeds $25,000. Excess credits may be carried back one year and forward up to 20 years.

A taxpayer's tentative minimum tax is treated as being zero for purposes of determining the tax liability limitation with respect to the section 45 credit for electricity produced from a facility (placed in service after October 22, 2004) during the first four years of production beginning on the date the facility is placed in service.

Qualified facilities

Wind energy facility

A wind energy facility is a facility that uses wind to produce electricity. To be a qualified facility, a wind energy facility must be placed in service after December 31, 1993, and before January 1, 2009.

Closed-loop biomass facility

A closed-loop biomass facility is a facility that uses any organic material from a plant which is planted exclusively for the purpose of being used at a qualifying facility to produce electricity. In addition, a facility can be a closed-loop biomass facility if it is a facility that is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both coal and other biomass, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation.

To be a qualified facility, a closed-loop biomass facility must be placed in service after December 31, 1992, and before January 1, 2009. In the case of a facility using closed-loop biomass but also co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass, a qualified facility must be originally placed in service and modified to co-fire the closed-loop biomass at any time before January 1, 2009.

[2] Sec. 38(b)(8).

Open-loop biomass (including agricultural livestock waste nutrients) facility

An open-loop biomass facility is a facility that uses open-loop biomass to produce electricity. For purposes of the credit, open-loop biomass is defined as (1) any agricultural livestock waste nutrients or (2) any solid, nonhazardous, cellulosic waste material or any lignin material that is segregated from other waste materials and which is derived from:

- forest-related resources, including mill and harvesting residues, precommercial thinnings, slash, and brush;
- solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes, and landscape or right-of-way tree trimmings; or
- agricultural sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Agricultural livestock waste nutrients are defined as agricultural livestock manure and litter, including bedding material for the disposition of manure. Wood waste materials do not qualify as open-loop biomass to the extent they are pressure treated, chemically treated, or painted. In addition, municipal solid waste, gas derived from the biodegradation of solid waste, and paper which is commonly recycled do not qualify as open-loop biomass. Open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (co-firing) beyond such fossil fuel required for start up and flame stabilization.

In the case of an open-loop biomass facility that uses agricultural livestock waste nutrients, a qualified facility is one that was originally placed in service after October 22, 2004, and before January 1, 2009, and has a nameplate capacity rating which is not less than 150 kilowatts. In the case of any other open-loop biomass facility, a qualified facility is one that was originally placed in service before January 1, 2009.

Geothermal facility

A geothermal facility is a facility that uses geothermal energy to produce electricity. Geothermal energy is energy derived from a geothermal deposit that is a geothermal reservoir consisting of natural heat that is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). To be a qualified facility, a geothermal facility must be placed in service after October 22, 2004, and before January 1, 2009.

Solar facility

A solar facility is a facility that uses solar energy to produce electricity. To be a qualified facility, a solar facility must be placed in service after October 22, 2004, and before January 1, 2006.

Small irrigation facility

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility must be at least 150 kilowatts but less than five megawatts. To be a qualified facility, a small irrigation facility

must be originally placed in service after October 22, 2004, and before January 1, 2009.

Landfill gas facility

A landfill gas facility is a facility that uses landfill gas to produce electricity. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. To be a qualified facility, a landfill gas facility must be placed in service after October 22, 2004, and before January 1, 2009.

Trash combustion facility

Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. To be a qualified facility, a trash combustion facility must be placed in service after October 22, 2004, and before January 1, 2009. A qualified trash combustion facility includes a new unit, placed in service after October 22, 2004, that increases electricity production capacity at an existing trash combustion facility. A new unit generally would include a new burner/boiler and turbine. The new unit may share certain common equipment, such as trash handling equipment, with other pre-existing units at the same facility. Electricity produced at a new unit of an existing facility qualifies for the production credit only to the extent of the increased amount of electricity produced at the entire facility.

Hydropower facility

A qualifying hydropower facility is (1) a facility that produced hydroelectric power (a hydroelectric dam) prior to August 8, 2005, at which efficiency improvements or additions to capacity have been made after such date and before January 1, 2009, that enable the taxpayer to produce incremental hydropower or (2) a facility placed in service before August 8, 2005, that did not produce hydroelectric power (a nonhydroelectric dam) on such date, and to which turbines or other electricity generating equipment have been added after such date and before January 1, 2009.

At an existing hydroelectric facility, the taxpayer may claim credit only for the production of incremental hydroelectric power. Incremental hydroelectric power for any taxable year is equal to the percentage of average annual hydroelectric power produced at the facility attributable to the efficiency improvement or additions of capacity determined by using the same water flow information used to determine an historic average annual hydroelectric power production baseline for that facility. The Federal Energy Regulatory Commission will certify the baseline power production of the facility and the percentage increase due to the efficiency and capacity improvements.

At a nonhydroelectric dam, the facility must be licensed by the Federal Energy Regulatory Commission and meet all other applicable environmental, licensing, and regulatory requirements and the turbines or other generating devices must be added to the facility after August 8, 2005 and before January 1, 2009. In addition, there must not be any enlargement of the diversion structure, construction or enlargement of a bypass channel, or the impoundment or

any withholding of additional water from the natural stream channel.

Summary of credit rate and credit period by facility type

TABLE 1.—SUMMARY OF SECTION 45 CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES

Eligible electricity production activity	Credit amount for 2007 (cents per kilowatt-hour)	Credit period for facilities placed in service on or before August 8, 2005 (years from placed-in-service date)	Credit period for facilities placed in service after August 8, 2005 (years from placed-in-service date)
Wind	2	10	10
Closed-loop biomass	2	[1] 10	10
Open-loop biomass (including agricultural livestock waste nutrient facilities)	1	[2] 5	10
Geothermal	2	5	10
Solar (pre-2006 facilities only)	2	5	10
Small irrigation power	1	5	10
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	1	5	10
Qualified hydropower	1	N/A	10

[1] In the case of certain co-firing closed-loop facilities, the credit period begins no earlier than October 22, 2004.
[2] For certain facilities placed in service before October 22, 2004, the Eve-year credit period commences on January 1, 2005.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception: the cooperative may exclude from its taxable income distributions of patronage dividends. Generally, a cooperative that is subject to the cooperative tax rules of subchapter T of the Code[3] is permitted a deduction for patronage dividends paid only to the extent of net income that is derived from transactions with patrons who are members of the cooperative.[4] The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative. Fir taxable years ending on or before August 8, 2005, cooperatives may not pass any portion of the income tax credit for electricity production through to their patrons.

For taxable years ending after August 8, 2005, eligible cooperatives may elect to pass any portion of the credit through to their patrons. An eligible cooperative is defined as a cooperative organization that is owned more than 50 percent by agricultural producers or entities owned by agricultural producers. The credit may be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. The election must be made on a timely filed return for the taxable year and, once made, is irrevocable for such taxable year.

REASONS FOR CHANGE

The Committee believes that it is important to extend existing incentives for the production of electricity from renewable resources because these incentives help limit the environmental consequences

[3] Secs. 1381–1383.
[4] Sec. 1382.

of producing electricity from fossil fuels. Because many of the facilities that produce electricity from renewable resources take several years to be placed in service, the Committee believes that it is important to provide a long-term extension of these incentives to ensure that the tax incentive serves its purpose of encouraging the installation of these facilities. The Committee also believes that it is important to expand the available incentives to include new renewable resources as the technology develops to take advantage of those resources.

Finally, the Committee believes that the production tax credit is intended to help taxpayers afford the costs of installing facilities that produce electricity from renewable resources. Under present law, certain facilities that produce electricity from renewable resources receive greater assistance than others. The Committee believes that a framework limiting the present value of all production tax credits to a percentage of the cost of each particular renewable energy project is appropriate to minimize disparities among renewable resources and to ensure that the amount of financial assistance corresponds with the cost of installing each facility.

EXPLANATION OF PROVISION

The provision extends and modifies the electricity production credit.

Extension of placed-in-service date for qualifying facilities

The provision extends for four years (through 2012) the period during which qualified facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, small irrigation power, municipal solid waste, and qualified hydropower may be placed in service for purposes of the electricity production credit.

Addition of marine and hydrokinetic renewable energy as a qualified resource

The provision adds marine and hydrokinetic renewable energy as a qualified energy resource and marine and hydrokinetic renewable energy facilities as qualified facilities. Marine and hydrokinetic renewable energy is defined as energy derived from (1) waves, tides, and currents in oceans, estuaries, and tidal areas; (2) free flowing water in rivers, lakes, and streams; (3) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes; or (4) differentials in ocean temperature (ocean thermal energy conversion). The term does not include energy derived from any source. that uses a dam, diversionary structure (except for irrigation systems, canals, and other man-made channels), or impoundment for electric power production. A marine and hydrokinetic renewable energy facility is any facility owned by the taxpayer and placed in service after the date of enactment and before 2014 that produces electric power from marine and hydrokinetic renewable energy and that has a nameplate capacity rating of at least 150 kilowatts.

Under the provision, marine and hydrokinetic renewable energy facilities subsume small irrigation power facilities. The provision, therefore, terminates as a separate category of qualified facility

small irrigation power facilities placed in service on or after the date of enactment. Such facilities qualify for the electricity production credit as marine and hydrokinetic renewable energy facilities.

Phaseout replaced by limitation based on investment in facility

The provision replaces the electricity production credit phaseout with an annual limit on the total credits that may be claimed with respect to any qualified facility placed in service after 2008 based on the investment in the facility. Under the limitation, the electricity production credit determined for any taxable year may not exceed the eligible basis of the facility multiplied by a limitation percentage (the "applicable percentage") determined by the Secretary for the month during which the facility is originally placed in service. The applicable percentage for any month is the percentage that yields over a 10-year period amounts of limitation that have a present value equal to 35 percent of the eligible basis of the facility. The discount rate for purposes of this calculation is the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month preceding the month for which the percentage is being prescribed. The eligible basis of a facility is the basis of such facility at the time it is originally placed in service.

Special rules apply for the first and last year of a facility's 10-year credit period to allocate the limitation across a taxpayer's taxable years. In addition, if a facility's production is less than the limitation amount for any taxable year, the limitation with respect to such facility for the next taxable year is increased by the amount of the unused limitation. Similarly, if the electricity production credit exceeds the limitation amount for any taxable year, but falls under the limit the following year, the credit for the following taxable year is increased, up to that year's limitation amount, by the amount of such excess, but not beyond the facility's 10-year credit eligibility period.

EFFECTIVE DATE

The extension of the electricity production credit and the limitation based on investment are effective for facilities originally placed in service after 2008. The repeal of the credit phaseout adjustment is effective for taxable years ending after 2008. The addition of marine and hydrokinetic renewable energy as a qualified energy resource is effective for electricity produced at qualified facilities and sold after the date of enactment in taxable years ending after such date.

B. Extension and Modification of Energy Credit (Sec. 103 of the Bill and Sec. 48 of the Code)

PRESENT LAW

In general

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment that either (1) uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the

case of electricity generated by geothermal power, up to the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

The energy credit is a component of the general business credit[5] and as such is subject to the alternative minimum tax. An unused general business credit generally may be carried back one year and carried forward 20 years.[6] The taxpayer's basis in the property is reduced by the amount of the credit claimed. For projects whose construction time is expected to equal or exceed two years, the credit may be claimed as progress expenditures are made on the project, rather than during the year the property is placed in service. Similarly, the credit only applies to expenditures made after the effective date of the provision.

In general, property that is public utility property is not eligible for the credit. Public utility property is property that is used predominantly in the trade or business of the furnishing or sale of (1) electrical energy, water, or sewage disposal services, (2) gas through a local distribution system, or (3) telephone service, domestic telegraph services, or other communication services (other than international telegraph services), if the rates for such furnishing or sale have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission. This rule is waived in the case of telecommunication companies' purchases of fuel cell and microturbine property.

Special rules for solar energy property

The credit for solar energy property is increased to 30 percent in the case of periods after December 31, 2005 and prior to January 1, 2009. Additionally, equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is solar energy property eligible for the 30-percent credit.

Fuel cells and microturbines

The business energy credit also applies for the purchase of qualified fuel cell power plants, but only for periods after December 31, 2005 and prior to January 1, 2009: The credit rate is 30 percent.

A qualified fuel cell power plant is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, and (2) has an electricity-only generation efficiency of greater than 30 percent and a capacity of at least 0.5 kilowatt. The credit may not exceed $500 for each 0.5 kilowatt of capacity.

The business energy credit also applies for the purchase of qualifying stationary microturbine power plants, but only for periods after December 31, 2005 and prior to January 1, 2009. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a

[5] Sec. 38(b)(1).
[6] Sec. 39.

recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts.

Additionally, for purposes of the fuel cell and microturbine credits, and only in the case of telecommunications companies, the general present-law section 48 restriction that would otherwise prohibit telecommunication companies from claiming the new credit due to their status as public utilities is waived.

REASONS FOR CHANGE

The Committee believes that alternative sources of energy are necessary to meet growing energy needs, reduce reliance on imports, and reduce green-house gas emissions. Toward that end, the Committee believes a long-term extension of the business credit for solar and fuel cell property is warranted to ensure that business have the certainly needed to continue development of alternative energy resources. The Committee believes that all sectors of the economy should be encouraged to invest in alternative energy technologies, and therefore removes the rule that prohibits public utilities from claiming the energy credit and also allows the credit against the alternative minimum tax for all taxpayers. The Committee also believes that increasing the cap on the fuel cell credit is necessary to promote further development and advancement of fuel cell technology.

EXPLANATION OF PROVISION

The provision extends the 30-percent credit for solar and fuel cell property for eight years. Additionally, the fuel cell credit cap of $500 for each 0.5 kilowatt of capacity is raised to $1,500 for each 0.5 kilowatt. The provision makes the energy credit allowable against the alternative minimum tax.

Also, the restriction on public utility property being eligible for the credit is eliminated.

EFFECTIVE DATE

The provision extending the 30-percent credit is effective on the date of enactment. The increase in the credit cap for fuel cells applies to periods after the date of enactment, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990). The provision repealing the prohibition on public utility eligibility for the energy credit applies to periods after June 20, 2007, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990). The allowance of the credit against the al-

ternative minimum tax is effective for credits determined in taxable years beginning after the date of enactment.

C. New Clean Renewable Energy Bonds (Sec. 104 of the Bill and New Sec. 54B of the Code)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Activities that can be financed with these tax-exempt bonds include the financing of electric power facilities (i.e., generation, transmission, distribution, and retailing).

Interest on State or local government bonds to finance activities of private persons ("private activity bonds") is taxable unless a specific exception is contained in the Code (or in non-Code provision of a revenue Act). The term "private person" generally includes the Federal Government and all other individuals and entities other than States or local governments. The Code includes exceptions permitting States or local governments to act as conduits providing tax-exempt financing for certain private activities. In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2007, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $256.24 million, if greater.

The tax exemption for State and local bonds also does not apply to any arbitrage bond.[7] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[8] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

An issuer must file with the IRS certain information about the bonds issued by them in order for that bond issue to be tax-exempt.[9] Generally, this information return is required to be filed no later than the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

Clean renewable enemy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds ("CREBs"). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 per-

[7] Sec. 103(a) and (b)(2).
[8] Sec. 148.
[9] Sec. 149(e).

cent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. "Qualified projects" are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements of that section.[10] The term "qualified issuers" includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term "qualified borrower" includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. The discount rate used to determine the present value amount is the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month the CREBs are issued. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem bonds. The five-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

[10] In addition, Notice 2006–7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in sections 45(d)(1) through (d)(9) and owned by such qualified borrower.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of $1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is $750 million. CREBs must be issued before January 1, 2009.

REASONS FOR CHANGE

The Committee believes that incentives for the development of facilities that produce electricity from renewable resources will help limit the environmental consequences of continued reliance on power generated using fossil fuels. Because certain taxpayers are unable to benefit from tax credits, tax-credit bonds provide an alternative means of assisting such taxpayers with the costs of installing facilities that produce electricity from renewable resources. As a result, the Committee feels that it is appropriate to authorize the issuance of new clean renewable energy bonds.

The Committee also believes that the general rules for tax-credit bonds should be consistent. The Committee believes that a uniform set of general rules would benefit the CREBs program and other tax-credit bond programs. The Committee recognizes that the rules that apply to present-law CREBs should be modified in order to enhance the benefits provided by these tax credit bonds. The Committee also believes that a separate tax credit bond program is necessary for governmental bodies.

EXPLANATION OF PROVISION

The provision creates a new category of clean renewable energy bonds ("New CREBs") that may be issued by qualified issuers to finance qualified renewable energy facilities. Qualified renewable energy facilities are facilities: (1) that qualify for the tax credit under section 45 (other than Indian coal and refined coal production facilities), without regard to the placed-in-service date requirements of that section; and (2) that are owned by a public power provider or cooperative electric company. The term "cooperative electric company" means a mutual or cooperative electric company (described in section 501(c)(12) or section 1381(a)(2)(C)). The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph). The term "qualified issuers" includes: (1) public power providers; (2) cooperative electric companies; (3) a not-for-profit electric utility that has received a loan or guarantee under the Rural Electrification Act; and (4) clean renewable energy bond lenders. A clean renewable energy bond lender means a cooperative that is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

There is a national limitation for New CREBs of $2 billion. The provision limits the total allocations that may be made to projects of public power providers and projects of cooperative electric companies to 60 percent of the national limitation and 40 percent of the national limitation, respectively. Allocations to cooperative electric companies may be made in the manner the Secretary determines appropriate. Allocations to projects of public power providers shall be made, to the extent practicable, in such manner that the

amount allocated to each such project bears the same ratio to the cost of such project as the maximum allocation limitation to projects of public power providers bears to the cost of all such projects.

Under the provision, 100 percent of the available project proceeds of New CREBs must be used within the three-year period that begins on the date of issuance. The provision defines available project proceeds as proceeds from the sale of the bond issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified projects during the three-year spending period, bonds will continue to qualify as New CREBs if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

New CREBs generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner such that the fund will not exceed the amount necessary to repay the issue if invested at the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the New CREBs are issued; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the New CREBs are issued.

The maturity of New CREBs is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month the qualified energy conservation bonds are issued.

As with present-law CREBs, the taxpayer holding New CREBs on a credit allowance date is entitled to a tax credit. Unlike present-law CREBs, however, the credit rate on New CREBs is determined by the Secretary and is to be a rate that is 70 percent of the rate that would permit issuance of CREBs without discount and interest cost to the issuer. The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of New CREBs are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of New CREBs. The provision authorizes the Secretary to impose additional financial reporting requirements by regulation.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

D. Extension and Modification of Special Rule for Sales or Other Dispositions To Implement FERC, Restructuring Policy or State Electric Restructuring Policy (Sec. 105 of the bill and Sec. 451(i) of the Code)

PRESENT LAW

Generally, a taxpayer selling property recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

One such special tax provision permits taxpayers to elect to recognize gain from qualifying electric transmission transactions ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period[11] (the "reinvestment property"). If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain is recognized to the extent of such excess in the year of the qualifying electric transmission transaction.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2008. In general, an independent transmission company is defined as: (1) an independent transmission provider[12] approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than December 31, 2007; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or sell-

[11] The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.

[12] For example, a regional transmission organization, an independent system operator, or an independent transmission company.

ing electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the reinvestment property may be purchased by any member of the affiliated group (in lieu of the taxpayer).

REASONS FOR CHANGE

The Committee believes that the "unbundling" of electric transmission assets held by vertically integrated utilities, with the transmission assets ultimately placed under the ownership or control of independent transmission providers (or other similarly-approved operators), continues to be an important policy. To facilitate the implementation of this policy, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by providing a tax deferral for gain associated with certain dispositions of electric transmission assets.

The Committee believes that the exempt utility property purchased by the taxpayer with the proceeds from the qualifying electric transmission transaction should be located in the United States in order to qualify for tax-deferral treatment.

EXPLANATION OF PROVISION

The provision extends the treatment under the present-law deferral provision to sales or dispositions by a qualified electric utility prior to January 1, 2010. A qualified electric utility is defined as an electric utility as defined in the Federal Power Act [13] and any person in the same holding company system [14] as an electric utility.

The definition of an independent transmission company is modified for taxpayers whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider, which under the provision must take place no later than four years after the close of the taxable year in which the transaction occurs.

The provision also changes the definition of exempt utility property to exclude property that is located outside the United States.

EFFECTIVE DATE

The extension provision applies to qualifying electric transmission transactions after December 31, 2007. The change in the definition of an independent transmission company is effective as if included in section 909 of the American Jobs Creation Act of 2004. The exclusion for property located outside the United States applies to qualifying electric transmission transactions after the date of enactment.

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[13] Sec. 3(22) of the Federal Power Act, 16 U.S.C. 796(22).

[14] Sec. 1262(9) of the Public Utility Holding Company Act of 2005, 42 U.S.C. 16451(9).

E. Credit for Residential Energy Efficient Property (Sec. 106 of the Bill and Sec. 25D of the Code)

PRESENT LAW

Code section 25D provides a personal tax credit for the purchase of qualified solar electric property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 30-percent of qualifying expenditures, with a maximum credit for each of these systems of property of $2,000. Section 25D also provides a 30 percent credit for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified solar electric property is property that uses solar energy to generate electricity for use in a dwelling unit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

The credit is not allowed against the alternative minimum tax.

The credit applies to property placed in service after December 31, 2005 and prior to January 1, 2009.

REASONS FOR CHANGE

The Committee believes the cap on the amount of the available credit should be removed in order to provide a straight 30-percent credit for residential fuel cell, solar electric, and solar hot water heating property. The removal of the cap will provide an incentive to invest in additional solar and fuel cell property for those who would otherwise have been restricted by the cap.

EXPLANATION OF PROVISION

The provision eliminates the fuel cell credit cap of $500 for each 0.5 kilowatt of capacity and the $2,000 solar electric and $2,000 solar water heating caps. The provision also allows the credit to offset alternative minimum tax liability.

EFFECTIVE DATE

The provision is generally effective for expenditures after the date of enactment. The allowance of the credit against the alternative minimum tax is effective for taxable years beginning after the date of enactment.

TITLE II—CONSERVATION

A. TRANSPORTATION

1. Credit for new plug-in hybrid vehicles (sec. 201 of the bill and sec. 30B and new sec. 30D of the Code)

PRESENT LAW

In general

A credit is available for each new qualified fuel cell vehicle, hybrid vehicle, advanced lean burn technology vehicle, and alternative fuel vehicle placed in service by the taxpayer during the taxable year.[15] In general, the credit amount varies depending upon the type of technology used, the weight class of the vehicle, the amount by which the vehicle exceeds certain fuel economy standards, and, for some vehicles, the estimated lifetime fuel savings. The credit generally is available for vehicles purchased after 2005. The credit terminates after 2009, 2010, or 2014, depending on the type of vehicle.

In general, the credit is allowed to the vehicle owner, including the lessor of a vehicle subject to a lease. If the use of the vehicle is described in paragraphs (3) or (4) of section 50(b) (relating to use by tax-exempt organizations, governments, and foreign persons) and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

Fuel cell vehicles

A qualified fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle and may or may not require reformation prior to use. A qualified fuel cell vehicle must be purchased before January 1, 2015. The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2002 model year city fuel economy rating for vehicles of various weight classes.[16] Table 2, below, shows the base credit amounts.

[15] Sec. 30B.
[16] See discussion surrounding Table 7, below.

TABLE 2.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle gross weight rating (pounds)	Credit amount
Vehicle ≤ 8,500	$8,000
8,500 < vehicle ≤ 14,000	$10,000
14,000 < vehicle ≤ 26,000	$20,000
26,000 < vehicle	$40,000

In the case of a fuel cell vehicle weighing less than 8,500 pounds and placed in service after December 31, 2009, the $8,000 amount in Table 2, above is reduced to $4,000.

Table 3, below, shows the additional credits for passenger automobiles or light trucks.

TABLE 3.—CREDIT FOR QUALIFIED FUEL CELL VEHICLES

Credit	If fuel economy of the fuel cell vehicle is:	
	at least	but less than
$1,000	150% of base fuel economy	175% of base fuel economy
$1,500	175% of base fuel economy	200% of base fuel economy
$2,000	200% of base fuel economy	225% of base fuel economy
$2,500	225% of base fuel economy	250% of base fuel economy
$3,000	250% of base fuel economy	275% of base fuel economy
$3,500	275% of base fuel economy	300% of base fuel economy
$4,000	300% of base fuel economy	

Hybrid vehicles and advanced lean burn technology vehicles

Qualified hybrid vehicle

A qualified hybrid vehicle is a motor vehicle that draws propulsion energy from on-board sources of stored energy that include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). A qualified hybrid vehicle must be placed in service before January 1, 2011 (January 1, 2010 in the case of a hybrid vehicle weighing more than 8,500 pounds).

Hybrid vehicles that are automobiles and light trucks

In the case of an automobile or light truck (vehicles weighing 8,500 pounds or less), the amount of credit for the purchase of a hybrid vehicle is the sum of two components: (1) a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard and (2) a conservation credit based on the estimated lifetime fuel savings of the qualified vehicle compared to a comparable 2002 model year vehicle that is powered solely by a gasoline or diesel internal combustion engine. A qualified hybrid automobile or light truck must have a maximum available power[17] from the rechargeable energy storage system of at least four percent. In addition, the vehicle must meet or exceed certain Environmental Protection Agency ("EPA") emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle

[17] For hybrid passenger vehicles and light trucks, 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. Sec. 30B(d)(3)(C)(i).

weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards.

Table 4, below, shows the fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy.

TABLE 4.—FUEL ECONOMY CREDIT

Credit	If fuel economy of the hybrid vehicle is:	
	at least	but less than
$400	125% of base fuel economy	150% of base fuel economy
$800	150% of base fuel economy	175% of base fuel economy
$1,200	175% of base fuel economy	200% of base fuel economy
$1,600	200% of base fuel economy	225% of base fuel economy
$2,000	225% of base fuel economy	250% of base fuel economy
$2,400	250% of base fuel economy	

Table 5, below, shows the conservation credit.

TABLE 5.—CONSERVATION CREDIT

Estimated lifetime fuel savings (gallons of gasoline)	Conservation amount
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	$500
At least 2,400 but less than 3,000	$750
At least 3,000	$1,000

Advanced lean burn technology vehicles

The amount of credit for the purchase of an advanced lean burn technology vehicle is the sum of two components: (1) a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard as described in Table 4, above, and (2) a conservation credit based on the estimated lifetime fuel savings of a qualified vehicle compared to a comparable 2002 model year vehicle as described in Table 5, above. The amounts of the credits are determined after an adjustment is made to account for the different BTU content of gasoline and the fuel utilized by the lean bum technology vehicle.

A qualified advanced lean burn technology vehicle is a passenger automobile or a light truck that incorporates direct injection, achieves at least 125 percent of the 2002 model year city fuel economy, and for 2004 and later model vehicles meets or exceeds certain Environmental Protection Agency emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards. A qualified advanced lean burn technology vehicle must be placed in service before January 1, 2011. Limitation on number of qualified hybrid and advanced lean burn technology vehicles eligible for the credit

There is a limitation on the number of qualified hybrid vehicles and advanced lean burn technology vehicles sold by each manufac-

turer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records the 60,000th hybrid and advanced lean burn technology vehicle sale occurring after December 31, 2005. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale. In the third and fourth calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

Thus, for example, summing the sales of qualified hybrid vehicles of all weight classes and all sales of qualified advanced lean burn technology vehicles, if a manufacturer records the sale of its 60,000th qualified vehicle in February of 2007, taxpayers purchasing such vehicles from the manufacturer may claim the full amount of the credit on their purchases of qualified vehicles through June 30, 2007. For the period July 1, 2007, through December 31, 2007, taxpayers may claim one half of the otherwise allowable credit on purchases of qualified vehicles of the manufacturer. For the period January 1, 2008, through June 30, 2008, taxpayers may claim one quarter of the otherwise allowable credit on the purchases of qualified vehicles of the manufacturer. After June 30, 2008, no credit may be claimed for purchases of hybrid vehicles or advanced lean bum technology vehicles sold by the manufacturer.

Hybrid vehicles that are medium and heavy trucks

In the case of a qualified hybrid vehicle weighing more than 8,500 pounds, the amount of credit is determined by the estimated increase in fuel economy and the incremental cost of the hybrid vehicle compared to a comparable vehicle powered solely by a gasoline or diesel internal combustion engine and that is comparable in weight, size, and use of the vehicle. For a vehicle that achieves a fuel economy increase of at least 30 percent but less than 40 percent, the credit is equal to 20 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of at least 40 percent but less than 50 percent, the credit is equal to 30 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of 50 percent or more, the credit is equal to 40 percent of the incremental cost of the hybrid vehicle.

The credit is subject to certain maximum applicable incremental cost amounts. For a qualified hybrid vehicle weighing more than 8,500 pounds but not more than 14,000 pounds, the maximum allowable incremental cost amount is $7,500. For a qualified hybrid vehicle weighing more than 14,000 pounds but not more than 26,000 pounds, the maximum allowable incremental cost amount is $15,000. For a qualified hybrid vehicle weighing more than 26,000 pounds, the maximum allowable incremental cost amount is $30,000.

A qualified hybrid vehicle weighing more than 8,500 pounds but not more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 10 percent. A qualified hybrid vehicle weighing more than 14,000

pounds must have a maximum available power from the rechargeable energy storage system of at least 15 percent.[18]

Alternative fuel vehicle

The credit for the purchase of a new alternative fuel vehicle is 50 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards. The incremental cost of any new qualified alternative fuel vehicle is the excess of the manufacturer's suggested retail price for such vehicle over the price for a gasoline or diesel fuel vehicle of the same model. To be eligible for the credit, a qualified alternative fuel vehicle must be purchased before January 1, 2011.

The amount of the credit varies depending on the weight of the qualified vehicle. The credit is subject to certain maximum applicable incremental cost amounts. Table 6, below, shows the maximum permitted incremental cost for the purpose of calculating the credit for alternative fuel vehicles by vehicle weight class as well as the maximum credit amount for such vehicles.

TABLE 6.—MAXIMUM ALLOWABLE INCREMENTAL COST FOR CALCULATION OF ALTERNATIVE FUEL VEHICLE CREDIT

Vehicle gross weight rating (pounds)	Maximum allowable incremental cost	Maximum allowable credit
Vehicle: ≤8,500	$5,000	$4,000
8,500 < vehicle: ≤14,000	$10,000	$8,000
14,000 < vehicle: ≤26,000	$25,000	$20,000
26,000 < vehicle	$40,000	$32,000

Alternative fuels comprise compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid fuel that is at least 85 percent methanol. Qualified alternative fuel vehicles are vehicles that operate only on qualified alternative fuels and are incapable of operating on gasoline or diesel (except to the extent gasoline or diesel fuel is part of a qualified mixed fuel, described below).

Certain mixed fuel vehicles, that is vehicles that use a combination of an alternative fuel and a petroleum-based fuel, are eligible for a reduced credit. If the vehicle operates on a mixed fuel that is at least 75 percent alternative fuel, the vehicle is eligible for 70 percent of the otherwise allowable alternative fuel vehicle credit. If the vehicle operates on a mixed fuel that is at least 90 percent alternative fuel, the vehicle is eligible for 90 percent of the otherwise allowable alternative fuel vehicle credit.

Base fuel economy

The base fuel economy is the 2002 model year city fuel economy by vehicle type and vehicle inertia weight class. For this purpose, "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the EPA for purposes of Title II

[18] In the case of such heavy-duty hybrid motor vehicles, the percentage of maximum available power is computed by dividing the maximum power available from the rechargeable energy storage system during a standard 10-second pulse power test, divided by the vehicle's total traction power. A vehicle's total traction power is the sum of the peak power from the rechargeable energy storage system and the heat (e.g., internal combustion or diesel) engine's peak power. If the rechargeable energy storage system is the sole means by which the vehicle can be driven, then the total traction power is the peak power of the rechargeable energy storage system.

of the Clean Air Act. Table 7, below, shows the 2002 model year city fuel economy for vehicles by type and by inertia weight class.

TABLE 7.—2002 MODEL YEAR CITY FUEL ECONOMY

Vehicle inertia weight class (pounds)	Passenger automobile (miles per gallon)	Light truck (miles per gallon)
1,500	45.2	39.4
1,750	45.2	39.4
2,000	39.6	35.2
2,250	35.2	31.8
2,500	31.7	29.0
2,750	28.8	26.8
3,000	26.4	24.9
3,500	22.6	21.8
4,000	19.8	19.4
4,500	17.6	17.6
5,000	15.9	16.1
5,500	14.4	14.8
6,000	13.2	13.7
6,500	12.2	12.8
7,000	11.3	12.1
8,500	11.3	12.1

Other rules

The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as a portion of the general business credit; the remainder of the credit is allowable to the extent of the excess of the regular tax (reduced by certain other credits) over the alternative minimum tax for the taxable year.

REASONS FOR CHANGE

The Committee believes that further investments in advanced technology vehicles are necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. Tax benefits provided directly to the consumer to lower the cost of new technology and alternative-fueled vehicles can help lower consumer resistance to these technologies by making the vehicles more price competitive with purely petroleum-based fuel vehicles and creating increased demand and market dependability for manufacturers to produce the technologies. The eventual goal is mass production and mass-market acceptance of new technology vehicles. To this end, the Committee believes the present-law incentives for alternative fuel vehicles should be expanded to include benefits for plug-in hybrid vehicles, which the Committee believes are the next generation of hybrid vehicles. The Committee also believes that this and existing incentives for alternative fuel vehicles should be treated as personal credits, making them eligible for possible future alternative minimum tax relief and thereby expanding their application to a larger number of potential buyers.

EXPLANATION OF PROVISION

Plug-in hybrid credit

The provision allows a credit for each qualified plug-in hybrid vehicle placed in service. A qualified plug-in hybrid vehicle is a motor

vehicle that meets certain emissions standards and is propelled to a significant extent by an electric motor that draws electricity from a battery that (1) has a capacity of at least four kilowatt-hours; (2) is capable of being recharged from an external source of electricity; and (3) is also propelled to a significant extent by other than an electric motor or has a significant onboard source of electricity that also recharges the battery. Qualified vehicles must have a gross weight of less than 14,000 pounds. In addition, qualified vehicles weighing less than 8,500 pounds must be passenger automobiles or light trucks.

The base amount of the plug-in hybrid credit is $4,000. If the qualified vehicle draws propulsion from a battery with at least five kilowatt-hours of capacity, the credit amount is increased by $200, plus another $200 for each kilowatt-hour of battery capacity in excess of five kilowatt-hours, up to a maximum additional credit of $2,000.

In general, the credit is available to the vehicle owner, including the lessor of a vehicle subject to lease. If the qualified vehicle is used by certain tax-exempt organizations, governments, or foreign persons and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

There is a limitation on the number of qualified plug-in hybrid vehicles sold by each manufacturer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records the 60,000th plug-in hybrid vehicle sale. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale. In the third and fourth calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

The basis of any qualified vehicle is reduced by the amount of the credit. To the extent a vehicle is eligible for credit as a qualified plug-in hybrid vehicle, it is not eligible for credit as a qualified hybrid vehicle under section 30B. The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the alternative minimum tax (reduced by certain other credits) for the taxable year.

Treatment of alternative motor vehicle credit as a personal credit

The provision modifies the section 30B alternative motor vehicle credit by treating the nonbusiness portion of that credit as a personal credit As a result, in the event Congress in the future extends the provision allowing personal credits to offset the alternative minimum tax, the alternative motor vehicle credit will be allowable against the alternative minimum tax.

EFFECTIVE DATE

The plug-in hybrid credit provision is effective for taxable years beginning after December 31, 2007. The provision treating the nonbusiness portion of the alternative motor vehicle credit as a personal credit is effective for taxable years beginning after December 31, 2006.

2. Extension and modification of credit for installation of alternative fuel vehicle refueling property (sec. 202 of the bill and sec. 30C of the Code)

PRESENT LAW

Taxpayers may claim a 30-percent credit for the cost of installing qualified clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer.[19] The credit may not exceed $30,000 per taxable year, per location, in the case of qualified refueling property used in a trade or business and $1,000 per taxable year per location in the case of qualified refueling property installed on property which is used as a principal residence.

Qualified refueling property is property (not including a building or its structural components) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle. The use of such property must begin with the taxpayer.

Clean-burning fuels are any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen. In addition, any mixture of biodiesel and diesel fuel, determined without regard to any use of kerosene and containing at least 20 percent biodiesel, qualifies as a clean fuel.

Credits for qualified refueling property used in a trade or business are part of the general business credit and may be carried back for one year and forward for 20 years. Credits for residential qualified refueling property cannot exceed for any taxable year the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. Generally, in the case of qualified refueling property sold to a tax-exempt entity, the taxpayer selling the property may claim the credit.

A taxpayer's basis in qualified refueling property is reduced by the amount of the credit. In addition, no credit is available for property used outside the United States or for which an election to expense has been made under section 179.

The credit is available for property placed in service after December 3l, 2005, and (except in the case of hydrogen refueling property) before January 1, 2010. In the case of hydrogen refueling property, the property must be placed in service before January 1, 2015.

[19] Sec. 30C.

REASONS FOR CHANGE

The Committee believes that widespread adoption of advanced technology and alternative fuel vehicles is necessary to transform automotive transportation in the United States to be cleaner, more fuel efficient, and less reliant on petroleum fuels. The Committee further believes that one important method to encourage this trend is to provide additional tax incentives for the development and installation of the infrastructure necessary to deliver clean fuels to drivers of clean-fuel vehicles.

EXPLANATION OF PROVISION

The provision extends and modifies the credit for installing alternative fuel refueling property. The provision extends for one year (through 2010) the credit for installing non-hydrogen alternative fuel refueling property. The provision also increases the credit amount to 50 percent of the cost of the qualified property and raises to $50,000 per taxable year, per location, the limit with respect to depreciable qualified property.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment, in taxable years ending after such date.

3. Extension of credits for biodiesel and extension and modification of renewable diesel credit (sec. 203 of the bill and secs. 40A, 6426, and 6427 of the Code)

PRESENT LAW

Income tax credit

Overview

The Code provides an income tax credit for biodiesel fuels (the "biodiesel fuels credit")[20] The biodiesel fuels credit is the sum of the biodiesel mixture credit, the biodiesel credit and the small agri-biodiesel producer credit. The biodiesel fuels credit is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions discussed below. The credit does not apply to fuel sold or used after December 31, 2008.

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act and (2) the requirements of the American Society of Testing and Materials ("ASTM") D6751. Agri-biodiesel is biodiesel derived solely from virgin oils including oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer

[20] Sec. 40A.

of the biodiesel which identifies the product produced and the percentage of the biodiesel and agri-biodiesel in the product.

Biodiesel mixture credit

The biodiesel mixture credit is 50 cents for each gallon of biodiesel (other than agribiodiesel) used by the taxpayer in the production of a qualified biodiesel mixture. For agribiodiesel, the credit is $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Biodiesel credit

The biodiesel credit is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel (100 percent biodiesel or B–100) and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle. For agri-biodiesel, the credit is $1.00 per gallon.

Small agri-biodiesel producer credit

The Code provides a small agri-biodiesel producer income tax credit, in addition to the biodiesel and biodiesel fuel mixture credits. The credit is a 10-cents-per-gallon credit for up to 15 million gallons of agri-biodiesel produced by small producers, defined generally as persons whose agri-biodiesel production capacity does not exceed 60 million gallons per year. The agribiodiesel must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified biodiesel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such agri-biodiesel at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c).

Biodiesel mixture excise tax credit

The Code also provides an excise tax credit for biodiesel mixtures[21] The credit is 50 cents for each gallon of biodiesel used by the taxpayer in producing a biodiesel mixture for sale or use in a trade or business of the taxpayer. In the case of agri-biodiesel, the credit is $1.00 per gallon. A biodiesel mixture is a mixture of biodiesel and diesel fuel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. No credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.[22]

[21] Sec. 6426(c).
[22] Sec. 6426(c)(4).

The credit is not available for any sale or use for any period after December 31, 2008. This excise tax credit is coordinated with the income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Payments with respect to biodiesel fuel mixtures

If any person produces a biodiesel fuel mixture in such person's trade or business, the Secretary is to pay such person an amount equal to the biodiesel mixture credit[23] To the extent the biodiesel fuel mixture credit exceeds the section 4081 liability of a person, the Secretary is to pay such person an amount equal to the biodiesel fuel mixture credit with respect to such mixture.[24] Thus, if the person has no section 4081 liability, the credit is refundable. The Secretary is not required to make payments with respect to biodiesel fuel mixtures sold or used after December 31, 2008.

Renewable diesel

"Renewable diesel" is diesel fuel that (1) is derived from biomass (as defined in section 45K(c)(3)) using a thermal depolymerization process; (2) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency ("EPA") under section 211 of the Clean Air Act (42 U.S.C. sec. 7545); and (3) meets the requirements of the ASTM D975 or D396. ASTM D975 provides standards for diesel fuel suitable for use in diesel engines. ASTM D396 provides standards for fuel oil intended for use in fuel-oil burning equipment, such as furnaces.

For purposes of the Code, renewable diesel is generally treated the same as biodiesel. Like biodiesel, the incentive may be taken as an income tax credit, an excise tax credit, or as a payment from the Secretary.[25] The incentive for renewable diesel is $1.00 per gallon and there is no small producer credit for renewable diesel. The incentives for renewable diesel expire after December 31, 2008.

REASONS FOR CHANGE

The Committee believes it is appropriate to extend the biodiesel and renewable diesel incentives for an additional two years to further encourage the development and use of these fuels. With respect to renewable diesel, the Committee believes that the incentive should be technology neutral, and therefore, the Committee deletes the requirement that the fuel be made through a thermal depolymerization process. In an environment of limited resources, the Committee believes energy policy is best served by limiting the one-dollar-per-gallon incentive to fuel suitable for use in diesel-powered highway vehicles. The Committee believes that fuel that is not suitable for use in diesel-powered highway vehicles but is derived from biomass should be eligible for a reduced 50 cents per gallon incentive for alternative fuels. Thus, the Committee limits the renewable diesel incentive to fuels meeting the standard for motor fuels, ASTM D975. While the Committee is unaware of an appropriate standard in addition to ASTM D975 for renewable diesel, the Committee recognizes that as technology evolves other appropriate standards may arise for fuel suitable for use in diesel-

[23] Sec. 6427(e).
[24] Sec. 6427(e)(1) and (e)(3).
[25] Secs. 40A(f), 6426(c), and 6427(e).

powered highway vehicles and therefore, the provision permits the Secretary to identify other equivalent or improved standards for such motor fuel.

EXPLANATION OF PROVISION

The provision extends an additional two years (through December 31, 2010) the income tax credit, excise tax credit, and payment provisions for biodiesel (including agri-biodiesel) and renewable diesel.

The provision modifies the definition of renewable diesel to eliminate the requirement that the fuel be made using a thermal depolymerization process. The provision also requires that all renewable diesel meet the ASTM D975 standard by eliminating the ASTM D396 standard from the definition of renewable diesel. The provision permits the Secretary to identify standards equivalent to ASTM D975 for renewable diesel suitable for use in diesel-powered highway vehicles.

EFFECTIVE DATE

The provision is generally effective for fuel produced, and sold or used, after the date of enactment. The modifications to the definition of renewable diesel are effective for fuel produced, and sold or used, after the date that is 30 days after the date of enactment.

4. Credit for production of cellulosic alcohol (sec. 204 of the bill and sec. 40 of the Code)

PRESENT LAW

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2010.[26]

Taxpayers are eligible for an income tax credit of 51 cents per gallon of ethanol (60 cents in the case of alcohol other than ethanol) used in the production of a qualified mixture (the "alcohol mixture credit"). A "qualified mixture" means a mixture of alcohol and gasoline, (or of alcohol and a special fuel) sold by the taxpayer as fuel, or used as fuel by the taxpayer producing such mixture. The term "alcohol" includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150.

Taxpayers may reduce their income taxes by 51 cents for each gallon of ethanol, which is not in a mixture with gasoline or other special fuel, that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business ("the alcohol credit"). For alcohol other than ethanol, the rate is 60 cents per gallon.[27]

In the case of ethanol, the Code provides an additional 10-cents-per-gallon credit for up to 15 million gallons per year for small producers. Small producer is defined generally as persons whose pro-

[26] The alcohol fuels credit is unavailable when, for any period before January 1, 2011, the tax rates for gasoline and diesel fuels drop to 4.3 cents per gallon.

[27] In the case of any alcohol (other than ethanol) with a proof that is at least 150 but less than 190, the credit is 45 cents per gallon (the "low-proof blender amount"). For ethanol with a proof that is at least 150 but less than 190, the low-proof blender amount is 37.78 cents.

duction capacity does not exceed 60 million gallons per year. The ethanol must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified alcohol fuel mixture in such person's trade or business (other than casual off farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (1)(a), (b), or (c). A cooperative may pass through the small ethanol producer credit to its patrons.

The alcohol fuels credit is includable in income and is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The credit is allowable against the alternative minimum tax.

For purposes of depreciation, section 168(1) allows an additional first-year deduction equal to 50 percent of the adjusted basis of qualified cellulosic biomass ethanol plant property. Qualified cellulosic biomass ethanol plant property means property used in the U.S. solely to produce cellulosic biomass ethanol. For this purpose, cellulosic biomass ethanol means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. In order to qualify, the property generally must be placed in service before January 1, 2013.

REASONS FOR CHANGE

The Committee believes that the development of fuels from cellulosic materials, such as corn stover, switchgrass, and other organic materials that can be grown anywhere, is a significant component in establishing the nation's energy independence using materials beyond starch-based, food source materials. Tax incentives are an important part of taking this industry from the level of demonstration projects into a practical and competitive fuel source. To encourage new production capacity for this fuel, using materials beyond starch-based, food sources materials, the provision provides a new per-gallon incentive for cellulosic alcohol fuel producers.

EXPLANATION OF PROVISION

The provision adds a fourth component to the alcohol fuels credit. The provision provides an income tax credit of 50 cents per gallon for certain qualified cellulosic fuel production of the producer for the taxable year. Qualified cellulosic fuel production is any cellulosic alcohol that is produced by a cellulosic alcohol fuel producer during the taxable year and is (1) sold by such producer to another person (a) for use by such other person in the production of a qualified alcohol fuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such alcohol at retail to another person and places such alcohol in the fuel tank of such other person; or (2) is used by the producer for any purpose described in (1)(a), (b), or (c).

Cellulosic alcohol is alcohol that (1) is produced in the United States for consumption in the United States and (2) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. Examples of such lignocellulosic or

hemicellulosic matter include dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste.

"Cellulosic alcohol fuel producer" means any person who produces cellulosic alcohol in a trade or business and is registered with the Secretary as a cellulosic alcohol fuel producer.

EFFECTIVE DATE

The provision is effective for alcohol produced after December 31, 2007.

5. Extension of transportation fringe benefit to bicycle commuters (sec. 205 of the bill and sec. 132 of the Code)

PRESENT LAW

Qualified transportation fringe benefits provided by an employer are excluded from an employee's gross income.[28] Qualified transportation fringe benefits include parking, transit passes, and vanpool benefits. In addition, no amount is includable in income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits. Up to $215 (for 2007) per month of employer-provided parking is excludable from income. Up to $110 (for 2007) per month of employer-provided transit and vanpool benefits are excludable from gross income. These amounts are indexed annually for inflation, rounded to the nearest multiple of $5.

Under present law, qualified transportation fringe benefits include a cash reimbursement by an employer to an employee. However, in the case of transit passes, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

REASONS FOR CHANCE

As part of a package of alternatives to reduce the nation's reliance on fossil fuels and to encourage conservation of energy resources, the Committee believes that the exclusion from gross income for qualified transportation fringe benefits should be extended to cover expenses incurred by an employee in commuting to work by bicycle. Bicycle commuting achieves both goals of reducing fossil fuel reliance and encouraging conservation. Such commuting involves recurring expenses and the Committee believes that incentives should be provided to encourage this nonmotorized form of commuting.

EXPLANATION OF PROVISION

The proposal adds a qualified bicycle commuting reimbursement fringe benefit as a qualified transportation fringe benefit. A qualified bicycle commuting reimbursement fringe benefit means, with respect to a calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year

[28] Code sec. 132(f).

of an employee for reasonable expenses incurred by the employee during the calendar year for the purchase and repair of a bicycle, bicycle improvements, and bicycle storage, provided that the bicycle is regularly used for travel between the employee's residence and place of employment.

The maximum amount that can be excluded from an employee's gross income for a calendar year on account of a bicycle commuting reimbursement fringe benefit is the applicable annual limitation for the employee for that calendar year. The applicable annual limitation for an employee for a calendar year is equal to the product of $20 multiplied by the number of the employee's qualified bicycle commuting months for the year. The $20 amount is not indexed for inflation. A qualified bicycle commuting month means with respect to an employee any month for which the employee does not receive any other qualified transportation fringe benefit and during which the employee regularly uses a bicycle for a substantial portion of travel between the employee's residence and place of employment. Thus, no amount is credited towards an employee's applicable annual limitation for any month in which an employee's usage of a bicycle is infrequent or constitutes an insubstantial portion of the employee's commute.

A bicycle commuting reimbursement fringe benefit cannot be funded by an elective salary contribution on the part of an employee.

EFFECTIVE DATE

The proposal is effective for taxable years beginning after December 31, 2007.

6. Modification of the limitation on depreciation under section 280F (sec. 206 of the bill and sec. 280F of the Code)

PRESENT LAW

Limitation on depreciation

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, passenger automobiles generally are recovered over a recovery period of five years. However, section 280F imposes a limitation on the amount of the annual depreciation deduction for passenger automobiles, including certain trucks and vans.

For passenger automobiles subject to the limitation and placed in service in 2007, the maximum amount of allowable depreciation is $3,060 for the year in which the vehicle is placed in service, $4,900 for the second year, $2,850 for the third year, and $1,775 for the fourth and later years. For trucks and vans subject to the limitation and placed in service in 2007, the maximum amount of allowable depreciation is $3,260 for the year in which the vehicle was placed in service, $5,200 for the second year, $3,050 for the third year, and $1,875 for the fourth and later years. The limitation applies to the combined amount of the depreciation deduction and the

section 179 expensing otherwise permitted under present law for the vehicle.

For purposes of the limitation, passenger automobiles are defined broadly to include any 4-wheeled vehicles that are manufactured primarily for use on public streets, roads, and highways and which are rated at 6,000 pounds unloaded gross vehicle weight or less.[29] In the case of a truck or a van, the depreciation limitation applies to vehicles that are rated 6,000 pounds gross vehicle weight or less. Sport utility vehicles under this weight amount are generally treated as a truck for the purpose of applying the limitation.[30]

Limitation on expensing

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or "expense") such costs under section 179. The Small Business and Work Opportunity Tax Act of 2007[31] increased the amount a taxpayer may deduct, for taxable years beginning in 2007 through 2010, to $125,000 of the cost of qualifying property placed in service for the taxable year.[32] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property. The $125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $500,000. The $125,000 and $500,000 amounts are indexed for inflation in taxable years beginning after 2007 and before 2011.[33]

Passenger automobiles subject to the section 280F limitation are eligible for section 179 expensing only to the extent of the dollar limitations in section 280F. The limitation applies to the combined amount of the depreciation deduction and the section 179 expensing for the taxable year otherwise permitted under present law for the vehicle.

For sport utility vehicles above the 6,000 pound weight rating, which are not subject to the limitation under section 280F, the maximum cost that may be expensed for any taxable year under section 179 is $25,000.[34] For purposes of this provision, a sport utility vehicle is defined as any 4-wheeled vehicle which: (1) is primarily designed or which can be used to carry passengers over public streets, roads, or highways; (2) is not subject to the section 280F limitations; and (3) is rated at not more than 14,000 pounds gross vehicle weight. Certain vehicles are excluded from this limitation, including any vehicle which: (1) is designed to have a seating ca-

[29] Sec. 280F(d)(5)(A). Exceptions are provided for any ambulance, hearse, or any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire.

[30] Rev. Proc. 2007–30, 2007–18 I.R.B. 1104.

[31] Pub. L. No. 110–28, sec. 8212 (2007).

[32] Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A), a renewal community (sec. 1400J), or the Gulf Opportunity Zone (sec. 1400N(e)).

[33] For taxable years beginning in 2011 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed for inflation.

[34] Sec. 179(b)(6).

pacity of more than nine persons behind the driver's seat; (2) is equipped with a cargo area of at least six feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment; or (3) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

REASONS FOR CHANGE

The Committee believes that section 280F may discourage taxpayers from purchasing lighter vehicles in favor of heavier vehicles. Because heavier vehicles tend to be less fuel efficient, the Committee feels that energy policy would be best served by removing the incentive for heavier vehicles. The Committee also believes that businesses and taxpayers that need to acquire heavier vehicles should not be disadvantaged by subjecting certain heavier vehicles to the same set of rules that apply to lighter vehicles. Therefore, the Committee believes that exceptions should be provided for certain light and heavy vehicles that, based on their design or use, will be used for certain business purposes.

EXPLANATION OF PROVISION

The provision modifies the definition of passenger automobiles subject to the section 280F limitation on depreciation and expensing. The provision defines passenger automobiles to include any 4-wheeled vehicles that are designed primarily to carry passengers over public streets, roads, or highways and which are rated at 14,000 pounds gross vehicle weight or less. Thus, under the provision, sport utility vehicles with a gross vehicle weight over 6,000 through 14,000 pounds (as well as those rated at 6,000 pounds or less gross vehicle weight) generally are subject to the section 280F limitation on depreciation and expensing.

The provision contains two categories of excepted vehicles: exempt-design vehicles and exempt-use vehicles. Some of the exceptions included within these two categories are included in present law, but some of the exceptions are new under the provision. An exempt-design vehicle is any vehicle: (1) which, by reason of its nature or design, is not likely to be used more than a de minimis amount for personal purposes;[35] (2) which is designed to have a seating capacity of more than nine persons behind the driver's seat; (3) which is equipped with a cargo area of at least five feet in interior length, which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment; or (4) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield. An exempt-use vehicle is: (1) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business; (2) any vehicle used by the

[35] Examples of such vehicles include qualified nonpersonal use vehicles as defined in Treas. Reg. sec. 1.274–5T(k).

taxpayer directly in the trade or business of transporting persons or property for compensation or hire; or (3) any truck or van if substantially all of the use of such vehicle by the taxpayer is directly in (a) a farming business, (b) the transportation of a substantial amount of equipment, supplies, or inventory, or (c) the moving or delivery of property which requires substantial cargo capacity. Thus, for example, a taxpayer in the business of plumbing who purchases a truck for purposes of transporting pipes, plumbing fixtures, and plumbing tools to a job site would not be subject to the limitations of section 280F as modified by the provision. Similarly, a taxpayer who purchasers a van and equips the van to carry ice cream as part of a business of making curbside sales of ice cream from the van to customers would not be subject to the limitations of section 280F as modified by the provision. On the other hand, if a taxpayer in the trade or business of real estate brokerage or sale purchases a vehicle, in part to transport sales brochures and "for sale" signs, the purchase of a vehicle generally would be subject to the limitations under section 280E as modified by the provision as such sales brochures and signs do not represent a substantial amount of equipment or supplies to the business of brokerage.

The provision imposes a recapture requirement in the case of any vehicle that is not a passenger automobile by reason of being an exempt-use vehicle to the extent the vehicle ceases to be an exempt-use vehicle in any taxable year after the taxable year in which the vehicle is placed in service. The provision also repeals the separate rule in present-law section 179(b)(6) relating to expensing of sport utility vehicles.

EFFECTIVE DATE

The provision is effective for property placed in service after December 31, 2007.

7. Restructure New York Liberty Zone tax incentives (sec. 207 of the bill and secs. 1400K and 1400L of the Code)

PRESENT LAW

In general

Present law includes a number of incentives to invest in property located in the New York Liberty Zone ("NYLZ"), which is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York. These incentives were enacted following the terrorist attack in New York City on September 11, 2001.[36]

[36] In addition to the NYLZ provisions described above, other NYLZ incentives are provided: (1) $8 billion of tax-exempt private activity bond financing for certain nonresidential real property, residential rental property and public utility property is authorized to be issued after March 9, 2002, and before January 1, 2010; and (2) $9 billion of additional tax-exempt advance refunding bonds is available after March 9, 2002, and before January 1, 2006, with respect to certain State or local bonds outstanding on September 11, 2001.

Special depreciation allowance for qualified New York Liberty Zone property

Section 1400L(b) allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified NYLZ property.[37] In order to qualify, property generally must be placed in service on or before December 31, 2006 (December 31, 2009 in the case of nonresidential real property and residential rental property).

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be property to which the general rules of the Modified Accelerated Cost Recovery System ("MACRS")[38] apply with (1) an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) certain nonresidential real property and residential rental property, or (4) computer software other than computer software covered by section 197. A special rule precludes the additional first-year depreciation under this provision for (1) qualified NYLZ leasehold improvement property[39] and (2) property eligible for the additional first-year depreciation deduction under section 168(k) (i.e., property is eligible for only one 30 percent additional first-year depreciation). Second, substantially all of the use of such property must be in the NYLZ. Third, the original use of the property in the NYLZ must commence with the taxpayer on or after September 11, 2001. Finally, the property must be acquired by purchase[40] by the taxpayer after September 10, 2001 and placed in service on or before December 31, 2006. For qualifying nonresidential real property and residential rental property the property must be placed in service on or before December 31, 2009 in lieu of December 31, 2006. Property will not qualify if a binding written contract for the acquisition of such property was in effect before September 11, 2001.[41]

Nonresidential real property and residential rental property are eligible for the additional first-year depreciation only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned as a result of the terrorist attacks of September 11, 2001.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies for the additional first-year depreciation deduction if the taxpayer begins the manufac-

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[37] The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

[38] A special rule precludes the additional first-year depreciation deduction for property that is required to be depreciated under the alternative depreciation system of MACRS.

[39] Qualified NYLZ leasehold improvement property is defined in another provision. Leasehold improvements that do not satisfy the requirements to be treated as "qualified NYLZ leasehold improvement property" may be eligible for the 30 percent additional first-year depreciation deduction (assuming all other conditions are met).

[40] For purposes of this provision, purchase is defined as under section 179(d).

[41] Property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

ture, construction, or production of the property after September 10, 2001, and the property is placed in service on or before December 31, 2006[42] (and all other requirements are met). Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

Depreciation of New York Liberty Zone leasehold improvements

Generally, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease[43] This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service[44] If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement generally is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement is placed in service.[45]

A special rule exists for qualified NYLZ leasehold improvement property, which is recovered over five years using the straight-line method. The term qualified NYLZ leasehold improvement property means property defined in section 168(e)(6) that is acquired and placed in service after September 10, 2001, and before January 1, 2007 (and not subject to a binding contract on September 10, 2001), in the NYLZ. For purposes of the alternative,depreciation system, the property is assigned a nine-year recovery period. A taxpayer may elect out of the 5-year (and 9-year) recovery period for qualified NYLZ leasehold improvement property.

Increased section 179 expensing for qualified New York Liberty Zone property

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or "expense") such costs under section 179. The Small Business and Work Opportunity Tax Act of 2007[46] increased the amount a taxpayer may deduct, for taxable years beginning in 2007 through 2010, to $125,000 of the cost of qualifying property placed in service for the taxable

[42] December 31, 2009 with respect to qualified nonresidential real property and residential rental property.

[43] Sec. 168(i)(8). The Tax Reform Act of 1986 modified the Accelerated Cost Recovery System ("ACRS") to institute MACRS. Prior to the adoption of ACRS by the Economic Recovery Tax Act of 1981, taxpayers were allowed to depreciate the various components of a building as separate assets with separate useful lives. The use of component depreciation was repealed upon the adoption of ACRS. The Tax Reform Act of 1986 also denied the use of component depreciation under MACRS.

[44] Former sections 168(f)(6) and 178 provided that, in certain circumstances, a lessee could recover the cost of leasehold improvements made over the remaining term of the lease. The Tax Reform Act of 1986 repealed these provisions.

[45] Secs. 168(b)(3), (c), (d)(2), and (i)(6). If the improvement is characterized as tangible personal property, ACRS or MACRS depreciation is calculated using the shorter recovery periods, accelerated methods, and conventions applicable to such property. The determination of whether improvements are characterized as tangible personal property or as nonresidential real property often depends on whether or not the improvements constitute a "structural component" of a building (as defined by Treas. Reg. sec. 1.48–1(e)(1)). See, e.g., *Metro National Corp v. Commissioner,* 52 TCM (CCH) 1440 (1987); *King Radio Corp. Inc. v. U.S.,* 486 F.2d 1091 (10th Cir. 1973); *Mallinckrodt, Inc. v. Commissioner,* 778 F.2d 402 (8th Cir. 1985) (with respect to various leasehold improvements).

[46] Pub. L. No. 110–28, sec. 8212 (2007).

year.[47] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property. The $125,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $500,000. The $125,000 and $500,000 amounts are indexed for inflation in taxable years beginning after 2007 and before 2011.[48] In general, qualifying property for this purpose is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

The amount a taxpayer can deduct under section 179 is increased for qualifying property used in the NYLZ. Specifically, the maximum dollar amount that may be deducted under section 179 is increased by the lesser of (1) $35,000 or (2) the cost of qualifying property placed in service during the taxable year. This amount is in addition to the amount otherwise deductible under section 179.

Qualifying property for purposes of the NYLZ provision means section 179 property[49] purchased and placed in service by the taxpayer after September 10, 2001 and before January 1, 2007, where (1) substantially all of the use of such property is in the NYLZ in the active conduct of a trade or business by the taxpayer in the NYLZ, and (2) the original use of which in the NYLZ commences with the taxpayer after September 10, 2001.[50]

The phase-out range for the section 179 deduction attributable to NYLZ property is applied by taking into account only 50 percent of the cost of NYLZ property that is section 179 property. Also, no general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

The provision is effective for property placed in service after September 10, 2001 and before January 1, 2007.

Extended replacement period for New York Liberty Zone involuntary conversions

A taxpayer may elect not to recognize gain with respect to property that is involuntarily converted if the taxpayer acquires within

[47] Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A), a renewal community (sec. 1400J), or the Gulf Opportunity Zone (sec. 1400N(e)).

[48] For taxable years beginning in 2011 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed for inflation.

[49] As defined in sec. 179(d)(1).

[50] See Rev. Proc. 2002–33, 2002–1 C.B. 963 (May 20, 2002), for procedures on claiming the increased section 179 expensing deduction by taxpayers who filed their tax returns before June 1, 2002.

an applicable period (the "replacement period") property similar or related in service or use.[51] If the taxpayer does not replace the converted property with property similar or related in service or use, then gain generally is recognized. If the taxpayer elects to apply the rules of section 1033, gain on the converted property is recognized only to the extent that the amount realized on the conversion exceeds the cost of the replacement property. In general, the replacement period begins with the date of the disposition of the converted property and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized.[52] The replacement period is extended to three years if the converted property is real property held for the productive use in a trade or business or for investment.[53]

The replacement period is extended to five years with respect to property that was involuntarily converted within the NYLZ as a result of the terrorist attacks that occurred on September 11, 2001. However, the five-year period is available only if substantially all of the use of the replacement property is in New York City. In all other cases, the present-law replacement period rules continue to apply.

REASONS FOR CHANGE

The Committee believes it is appropriate to restructure certain of the tax benefits that were provided to stimulate the redevelopment of the portions of the City of New York that were directly affected by the terrorist attacks of September 11, 2001. Certain of the tax benefits for investment that were provided to New York following the attacks of September 11, 2001, are not usable for public sector investments, and the Committee believes they should be restructured so that they may be used for public mass transit purposes. The restructuring will assist in the development of transit connections necessary for the ongoing redevelopment of the New York Liberty Zone area. The Committee believes that expanding mass transit and encouraging its use reduces fossil fuel consumption and promotes energy conservation.

EXPLANATION OF PROVISION

Repeal of certain NYLZ incentives

The provision repeals the first-year depreciation allowance of 30 percent and the additional section 179 expensing in the case of nonresidential real property and residential rental property as of the date of enactment of this provision.[54]

Creation of New York Liberty Zone Tax Credits

The provision provides a credit against tax imposed for any payroll period by section 3402 (related to withholding for wages paid) for which a New York Liberty Zone governmental unit is liable under section 3403. The credit is equal to such portion of the quali-

[51] Sec. 1033(a).
[52] Sec. 1033(a)(2)(B).
[53] Sec. 1033(g)(4).
[54] In the case of nonresidential real property and residential rental property acquired pursuant to a binding contract in effect on such enactment date, the first-year depreciation allowance of 30 percent and the additional section 179 expensing provisions terminate on December 31, 2009.

fying project expenditure amounts allocated to the governmental unit for the calendar year that such governmental unit allocates to such period. The amount of the credit allowed for any payroll period shall be treated as a payment to the Secretary on the day on which the wages were paid to the employee, but only to the extent the governmental unit actually deducted and withheld such wages for the applicable period. A New York Liberty Zone governmental unit is the State of New York, the City of New York, or any agency or instrumentality of such State or city.

Qualifying project expenditure amount means, with respect to any calendar year, the sum of (1) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, and (2) any such expenditures paid or incurred in any preceding calendar year beginning after the date of enactment of this provision and not previously allocated.

A qualifying project is any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone, which is designated as a qualifying project by the Governor of the State of New York and the Mayor of the City of New York.

The Governor of the State of New York and the Mayor of the City of New York are to jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying expenditure amount that may be taken into account by such governmental unit to determine the credit for any calendar year in the credit period. The credit period is the 12-year period beginning on January 1, 2008. Aggregate amounts allocated may not exceed $2 billion during the credit period. There is also an annual limit on allocations equal to (1) $169 million for each year of the credit period, plus (2) any amounts in (1) that were authorized to be allocated for prior calendar years in the credit period but not so allocated.

If amounts allocated to a New York Liberty Zone governmental unit exceed the aggregate taxes for which such unit is liable under section 3403, the excess may be carried to the succeeding calendar year and added to the allocation for that calendar year. If a New York Liberty Zone governmental unit does not use an amount allocated to it within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, such amounts will be treated as if never allocated, and thus they may be reallocated by the Governor and Mayor.

Under the provision, any expenditure for a qualifying project taken into account for purposes of the credit shall be considered State and local funds for the purpose of any Federal program.

The Governor of the State of New York and the Mayor of the City of New York must jointly submit to the Secretary an annual report that certifies the qualifying project expenditure amounts for the calendar year, the amount allocated to each New York Liberty Zone governmental unit, and any other such information as the Secretary may require.

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. Other Conversation Provisions

1. Qualified energy conservation bonds (sec. 211 of the bill and new sec. 54C of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Subject to certain Code restrictions, interest on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term "nongovernmental person" generally includes the Federal Government and all other individuals and entities other than States or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

Private activity bond tests

Present law provides two tests for determining whether a State or local bond is in substance a private activity bond, the private business test and the private loan test.[55]

Private business tests

Private business use and private payments result in State and local bonds being private activity bonds if both parts of the two-part private business test are satisfied—

- More than 10 percent of the bond proceeds is to be used (directly or indirectly) by a private business (the "private business use test"); and
- More than 10 percent of the debt service on the bonds is secured by an interest in property to be used in a private business use or to be derived from payments in respect of such property (the "private payment test").[56]

Private business use generally includes any use by a business entity including the Federal government), which occurs pursuant to terms not generally available to the general public. For example, if bond-financed property is leased to a private business (other than pursuant to certain short-term leases for which safe harbors are provided under Treasury regulations), bond proceeds used to finance the property are treated as used in a private business use,

[55] Sec. 141(b) and (c).

[56] The 10-percent private business use and payment threshold is reduced to five percent for private business uses that are unrelated to a governmental purpose also being financed with proceeds of the bond issue. In addition, as described more fully below, the 10-percent private business use and private payment thresholds are phased-down for larger bond issues for the financing of certain "output" facilities. The term output facility includes electric generation, transmission, and distribution facilities.

and rental payments are treated as securing the payment of the bonds. Private business use also can arise when a governmental entity contracts for the operation of a governmental facility by a private business under a management contract that does not satisfy Treasury regulatory safe harbors regarding the types of payments made to the private operator and the length of the contract.[57]

Private loan test

The second standard for determining whether a State or local bond is a private activity bond is whether an amount exceeding the lesser of (1) five percent of the bond proceeds or (2) $5 million is used (directly or indirectly) to finance loans to private persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test. Present law provides that the substance of a transaction governs in determining whether the transaction gives rise to a private loan. In general, any transaction which transfers tax ownership of property to a private person is treated as a loan.

Qualified private activity bonds

As stated, interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)). The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2007, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $256.24 million, if greater.

Arbitrage restrictions

The tax exemption for State and local bonds also does not apply to any arbitrage bond.[58] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire

[57] See Treas. Reg. sec. 1.141–3(b)(4) and Rev. Proc. 97–13, 1997–1 C.B. 632.
[58] Sec. 103(a) and (b)(2).

higher yielding investments.[59] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Indian tribal governments

Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.[60] Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. However, bonds issued by tribal governments are subject to limitations not imposed on State and local government issuers. Tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions or certain manufacturing facilities.[61]

Clean renewable enemy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds ("CREBs"). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. "Qualified projects" are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements of that section.[62] The term "qualified issuers" includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term "qualified borrower" includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable. energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

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[59] Sec. 148.
[60] Sec. 7871.
[61] Sec. 7871(c).
[62] In addition, Notice 2006–7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in section 45(d)(1) through (d)(9) and owned by such qualified borrower.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem any "nonqualified bonds." The five-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of $1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is $750 million. CREBs must be issued before January 1, 2009.

REASONS FOR CHANGE

The Committee believes that it is important to encourage energy conservation. The Committee believes that State and local governments often are in the best position to assess community needs and recognizes there are a number of approaches to energy conservation that State and local governments may wish to encourage. For example, the Committee recognizes that State and local governments may wish to encourage the development of combined heat and power systems, facilities that use thermal energy produced from renewable resources, smart electrical grids, the use of solar panels, mass transit, bicycle paths, or residential property that reduces peak-use of energy. In addition to these approaches, the Committee believes that State and local governments will develop numerous other approaches to energy conservation.

Furthermore, the Committee recognizes that there is great potential for energy conservation in urban areas and the Committee believes that local officials should have the flexibility to develop their own approaches to energy conservation. Therefore, the Committee believes that it is appropriate to empower State and local governments by providing them with access to subsidized financing to help promote energy-efficient policies tailored to the needs of local communities.

EXPLANATION OF PROVISION

The provision creates a new category of tax-credit bonds, qualified energy conservation bonds. Qualified energy conservation bonds may be used to finance qualified conservation purposes.

The term "qualified conservation purpose" means:

1. Capital expenditures incurred for purposes of reducing energy consumption in publicly owned buildings by at least 20 percent or implementing green community programs;

2. Expenditures with respect to facilities or grants that support research in: (A) development of cellulosic ethanol or other nonfossil fuels; (B) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels; (C) increasing the efficiency of existing technologies for producing nonfossil fuels; (D) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; and (E) technologies to reduce energy use in buildings;

3. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

4. Demonstration projects designed to promote the commercialization of: (A) green building technology; (B) conversion of agricultural waste for use in the production of fuel or otherwise; (C) advanced battery manufacturing technologies; (D) technologies to reduce peak-use of electricity; and (D) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; and

5. Public education campaigns to promote energy efficiency (other than movies, concerts, and other events held primarily for entertainment purposes).

There is a national limitation on qualified energy conservation bonds of $3.6 billion. Allocations of qualified energy conservation bonds are made to the States with sub-allocations to large local governments. Allocations are made to the States according to their respective populations, reduced by any sub-allocations to large local governments (defined below) within the States. Sub-allocations to large local governments shall be an amount of the national qualified energy conservation bond limitation that bears the same ratio to the amount of such limitation that otherwise would be allocated to the State in which such large local government is located as the population of such large local government bears to the population of such State. The term large local government means: any municipality or county if such municipality or county has a population of 100,000 or more. Indian tribal governments also are treated as large local governments for these purposes (without regard to population).

Each State or large local government receiving an allocation of qualified energy conservation bonds may further allocate issuance authority to issuers within such State or large local government. However, any allocations to issuers within the State or large local government shall be made in a manner that results in not less than 70 percent of the allocation of qualified energy conservation bonds to such State or large local government being used to des-

ignate bonds that are not private activity bonds (i.e., the bond cannot meet the private business tests or the private loan test of section 141).

Under the provision, 100 percent of the available project proceeds of qualified energy conservation bonds must be used for qualified conservation purposes. In the case of qualified conservation bonds issued as private activity bonds, 100 percent of the available project proceeds must be used for capital expenditures. In addition, qualified energy conservation bonds only may be issued by Indian tribal governments to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

The provision requires 100 percent of the available project proceeds of qualified energy conservation bonds to be used within the three-year period that begins on the date of issuance. The provision defines available project proceeds as proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified conservation purposes during the three-year spending period, bonds will continue to qualify as qualified energy conservation bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified energy conservation bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner such that the fund will not exceed the amount necessary to repay the issue if invested at the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

The maturity of qualified energy conservation bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

As with present-law tax credit bonds, the taxpayer holding qualified energy conservation bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is determined by the Secretary to be a rate that permits issuance of the bonds with-

out discount and interest cost to the qualified issuer. The amount of the tax credit to the holder is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits in one year may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of qualified energy conservation bonds are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of such bonds. The provision authorizes the Secretary to impose additional financial reporting requirements by regulation.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

2. Qualified residential energy efficiency assistance bonds (sec. 212 of the bill and new sec. 54D of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Subject to certain Code restrictions, interest on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term "nongovernmental person" generally includes the Federal Government and all other individuals and entities other than States or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds") and other Code requirements are met.

Private activity bond tests

Present law provides two tests for determining whether a State or local bond is in substance a private activity bond, the private business test and the private loan test.[63]

[63] Sec. 141(b) and (c).

Private business tests

Private business use and private payments result in State and local bonds being private activity bonds if both parts of the two-part private business test are satisfied—

1. More than 10 percent of the bond proceeds is to be used (directly or indirectly) by a private business (the "private business use test"); and

2. More than 10 percent of the debt service on the bonds is secured by an interest in property to be used in a private business use or to be derived from payments in respect of such property (the "private payment test").[64]

Private business use generally includes any use by a business entity (including the Federal government), which occurs pursuant to terms not generally available to the general public. For example, if bond-financed property is leased to a private business (other than pursuant to certain short-term leases for which safe harbors are provided under Treasury regulations), bond proceeds used to fmance the property are treated as used in a private business use, and rental payments are treated as securing the payment of the bonds. Private business use also can arise when a governmental entity contracts for the operation of a governmental facility by a private business under a management contract that does not satisfy Treasury regulatory safe harbors regarding the types of payments made to the private operator and the length of the contract.[65]

Private loan test

The second standard for determining whether a State or local bond is a private activity bond is whether an amount exceeding the lesser of (1) five percent of the bond proceeds or (2) $5 million is used (directly or indirectly) to finance loans to private persons. Private loans include both business and other (e.g., personal) uses and payments by private persons; however, in the case of business uses and payments, all private loans also constitute private business uses and payments subject to the private business test. Present law provides that the substance of a transaction governs in determining whether the transaction gives rise to a private loan. In general, any transaction which transfers tax ownership of property to a private, person is treated as a loan.

Qualified private activity bonds

As stated, interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)). The definition of exempt facility bond includes

[64] The 10-percent private business use and payment threshold is reduced to five percent for private business uses that are unrelated to a governmental purpose also being financed with proceeds of the bond issue. In addition, as described more fully below, the 10-percent private business use and private payment thresholds are phased-down for larger bond issues for the financing of certain "output" facilities. The term output facility includes electric generation, transmission, and distribution facilities.

[65] See Treas. Reg. sec. 1.141–3(b)(4) and Rev. Proc. 97–13, 1997–1 C.B. 632.

bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2007, the State volume cap, which is indexed for inflation, equals $85 per resident of the State, or $256.24 million, if greater.

Arbitrage restrictions

The tax exemption for State and local bonds also does not apply to any arbitrage bond.[66] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments.[67] In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods") before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

Clean renewable energy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue clean renewable energy bonds ("CREBs"). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for qualified projects. "Qualified projects" are facilities that qualify for the tax credit under section 45 (other than Indian coal production facilities), without regard to the placed-in-service date requirements of that section.[68] The term "qualified issuers" includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean renewable energy bond lenders. The term "qualified borrower" includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company. A clean renewable energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002.

[66] Sec. 103(a) and (b)(2).
[67] Sec. 148.
[68] In addition, Notice 2006–7 provides that qualified projects include any facility owned by a qualified borrower that is functionally related and subordinate to any facility described in section 45(d)(1) through (d)(9) and owned by such qualified borrower.

Unlike tax-exempt bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date is entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

CREBs are subject to a maximum maturity limitation. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. In addition, the Code requires level amortization of CREBs during the period such bonds are outstanding.

CREBs also are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs.

In addition to the above requirements, at least 95 percent of the proceeds of CREBs must be spent on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem any "nonqualified bonds." The five-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the five-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Issuers of CREBs are required to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. There is a national CREB limitation of $1.2 billion. The maximum amount of CREBs that may be allocated to qualified projects of governmental bodies is $750 million. CREBs must be issued before January 1, 2009.

REASONS FOR CHANGE

The Committee believes that incentives for the purchase and installation, of energy-efficient property and energy-efficient improvements to residences are desirable to help reduce energy consumption in the household sector. The Committee is aware that a number of communities have initiated programs that encourage the early adoption of energy conserving products. The Committee also believes that States are in an advantageous position to assess local energy conservation programs. Thus, the Committee believes that States should be provided with additional funding sources and flexibility to establish programs that promote energy conservation. The Committee further believes that this approach to the provision of tax benefits for energy conservation will enable taxpayers with no tax liability to benefit from energy conservation initiatives that operate through the Code.

EXPLANATION OF PROVISION

The provision creates a new category of tax-credit bonds, qualified residential energy efficiency assistance bonds. A bond is a qualified residential energy efficiency assistance bond if, in addition to the requirements described below, 100 percent of the available project proceeds are used for qualified residential energy efficiency assistance purposes and not less than 20 percent of the available project proceeds are used for qualified low-income residential energy efficiency assistance purposes.

A "qualified residential energy efficiency assistance purpose" is any grant or low-interest loan made by a State to acquire (including reasonable installation costs): (1) any property that meets (at a minimum) the requirements of the Energy Star program and which is to be installed in a dwelling unit; (2) any property that uses wind, solar energy, geothermal energy (including any geothermal heat pump to provide heating or cooling), or qualified fuel cell property to generate electricity, or to heat or cool water, for use in a dwelling unit (other than property described in section 25D(e)(3)); and (3) any improvements to a dwelling unit that are made pursuant to a plan certified by an energy efficiency expert that such improvements will yield at least a 20 percent reduction in total energy consumption related to heating, cooling, lighting, and appliances. The term "low-interest loan" means any loan that charges interest at a rate that does not exceed the applicable Federal rate in effect under section 1288(b)(1) (relating to original issue discount for tax-exempt obligations). Under the provision, the following types of property may not be financed with qualified residential energy efficiency assistance bonds, notwithstanding the fact such property may otherwise meet Energy Star requirements: equipment used in connection with a swimming pool, hot tub, or similar property; televisions; devices for converting digital signal to analog; DVD players; video cassette recorders; audio equipment; cordless phones; and any other property substantially used for recreational purposes.

Generally, grants or loans for improvements to a dwelling unit that are made pursuant to a plan certified by an energy efficiency expert that such improvements will yield at least a 20 percent reduction in total energy consumption may not exceed $5,000, in the aggregate. This amount is increased to $8,000 if such improvements are certified to yield at least a 35 percent reduction in total energy consumption and to $12,000 if such improvements are certified to yield at least a 50 percent reduction in total energy consumption.

A "qualified low-income residential energy efficiency assistance purpose" means any grant for a qualified residential energy efficiency assistance purpose with respect to a dwelling unit that is occupied (at the time of the grant) by individuals whose income is 50 percent or less of area median gross income (as determined under section 142(d)(2)(B)).

The provision requires 100 percent of available project proceeds to be used within the three-year period that begins on the date of issuance. The provision defines available project proceeds as proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds.

To the extent less than 100 percent of the available project proceeds are used to finance qualified residential energy efficiency assistance purposes during the three-year spending period, bonds will continue to qualify as qualified residential energy efficiency assistance bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the qualified issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified residential energy efficiency assistance bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner such that the fund will not exceed the amount necessary to repay the issue if invested at the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified residential energy efficiency assistance bonds are issued; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified residential energy efficiency assistance bonds are issued.

Under the provision, repayments of principal and applicable interest on financing provided by qualified residential energy efficiency assistance bonds must be used not later than the close of the three-month period beginning on the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue or for additional qualified residential energy efficiency assistance purposes. Applicable interest is interest on any loan that exceeds one percentage point.

The maturity on qualified residential energy efficiency assistance bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified residential energy efficiency assistance bonds are issued.

As with present-law tax-credit bonds, the taxpayer holding qualified residential energy efficiency assistance bonds on a credit allowance date is entitled to a tax credit. The credit rate on qualified residential energy efficiency assistance bonds is determined by the Secretary to be a rate that permits issuance of such bonds without discount and interest cost to the qualified issuer. The amount of the tax credit to the holder is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits in one year may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of

the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

There is a national limitation for qualified residential energy efficiency assistance bonds of $2.4 billion. Allocations are made to the States according to their respective populations. Qualified issuers of qualified residential energy efficiency assistance bonds include the States (including constituted authorities empowered to issue obligations on behalf of the States).

Issuers of qualified residential energy efficiency assistance bonds are required to certify that the financial disclosure requirements that apply to State and local bonds offered for sale to the general public are satisfied with respect to any Federal, State, or local government official directly involved with the issuance of such bonds. The provision authorizes the Secretary to impose additional financial reporting requirements by regulation.

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment.

3. Extension of energy efficient commercial buildings deduction (sec. 213 of the bill and sec. 179D of the Code)

PRESENT LAW

In general

Code section 179D provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA"), (2) which is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope, and (3) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 (as in effect on April 2, 2003). The deduction is limited to an amount equal to $1.80 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual or, in the case of residential property, the 2005 California Residential Alternative Calculation Method Approval Manual.

The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the

difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the Secretary shall promulgate regulations that allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

If a deduction is allowed under this section, the basis of the property shall be reduced by the amount of the deduction.

The deduction is effective for property placed in service after December 31, 2005 and prior to January 1, 2009.

Partial allowance of deduction

In the case of a building that does not meet the overall building requirement of a 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy-efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary of the Treasury. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system-specific target. The separate building systems are (1) the interior lighting system, (2) the heating, cooling, ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is $0.60 per square foot for each separate system.

Interim rules for lighting systems

In the case of system-specific partial deductions, in general no deduction is allowed until the Secretary establishes system-specific targets[69]. However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in Lighting Power Density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1–2001. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 30 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions under the interim rule.

REASONS FOR CHANGE

The Committee recognizes that a substantial portion of U.S. energy consumption is attributable to commercial buildings, and that the design and construction of commercial buildings is a multi-year

[69] IRS Notice 2006–52 has set a target of a 16⅔ percent reduction in total energy and power costs for each of the three subsystems.

process. Hence, the Committee believes that a long-term extension of the present-law deduction for energy-efficient commercial buildings is necessary to ensure that buildings currently in the design phase will be able to claim the deduction.

EXPLANATION OF PROVISION

The provision extends the energy-efficient commercial buildings deduction for five years, through December 31, 2013.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. Extension and modification of energy-efficient appliance credit (sec. 214 of the bill and sec. 45M of the Code)

PRESENT LAW

The provision provides a credit for the eligible production of certain energy-efficient dishwashers, clothes washers, and refrigerators.

The credit for dishwashers applies to dishwashers produced in 2006 and 2007 that meet the Energy Star standards for 2007. The credit amount equals $3 multiplied by 100 times the "energy savings percentage," but may not exceed $100 per dishwasher. The energy saving percentage is defined as the change in the energy factor (EF) required by the Energy Star program between 2007 and 2005 divided by the EF requirement for 2007. The EF required in 2005 for the Energy Star program was 0.58 and it was 0.65 in 2007, for a change of 0.07. The energy saving percentage is thus 0.07/0.65, which when multiplied by 100 times $3 equals $32.31 per refrigerator.

The credit for clothes washers equals $100 for clothes washers manufactured in 2006–2007 that meet the requirements of the Energy Star program that are in effect for clothes washers in 2007.

The credit for refrigerators is based on energy savings and year of manufacture. The energy savings are determined relative to the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. Refrigerators that achieve a 15 to 20 percent energy saving and that are manufactured in 2006 receive a $75 credit. Refrigerators that achieve a 20 to 25 percent energy saving receive a (i) $125 credit if manufactured in 2006–2007. Refrigerators that achieve at least a 25 percent energy saving receive a (i) $175 credit if manufactured in 2006–2007.

Appliances eligible for the credit include only those produced in the United States and that exceed the average amount of U.S. production from the three prior calendar years for each category of appliance. In the case of refrigerators, eligible production is U.S. production that exceeds 110 percent of the average amount of U.S. production from the three prior calendar years.

A dishwasher is any residential dishwasher subject to the energy conservation standards established by the Department of Energy. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin-operated washer, that satisfies the relevant efficiency standard.

The taxpayer may not claim credits in excess of $75 million for all taxable years, and may not claim credits in excess of $20 million with respect to clothes washers eligible for the $50 credit and refrigerators eligible for the $75 credit. A taxpayer may elect to increase the $20 million limitation described above to $25 million provided that the aggregate amount of credits with respect to such appliances, plus refrigerators eligible for the $100 and $125 credits, is limited to $50 million for all taxable years.

Additionally, the credit allowed in a taxable year for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit is part of the general business credit.

REASONS FOR CHANGE

The Committee believes that incentives provided for the manufacture of energy-efficient household appliances are desirable to promote the development of energy-efficient appliance technologies and to help reduce energy consumption in the household sector. Hence the Committee extends the credit and strengthens the standards that must be met in order to be eligible for the credits.

EXPLANATION OF PROVISION

The provision extends and modifies the energy efficient appliance credit.

The provision provides modified credits for eligible production as follows:

Dishwashers

- $45 in the case of a dishwasher that is manufactured in calendar year 2008 or 2009 that uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and
- $75 in the case of a dishwasher that is manufactured in calendar year 2008, 2009, or 2010 and that uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

Clothes washers

- $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 that meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor, and
- $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 that meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,
- $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009 or 2010 that meets or exceeds a 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and
- $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 that meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

Refrigerators

- $50 in the case of a refrigerator manufactured in calendar year 2008 that consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,
- $75 in the case of a refrigerator that is manufactured in calendar year 2008 or 2009 that consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,
- $100 in the case of a refrigerator that is manufactured in calendar year 2008, 2009 or 2010 that consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and
- $200 in the case of a refrigerator manufactured in calendar year 2008, 2009 or 2010 that consumes at least 30 percent less energy than the 2001 energy conservation standards.

Dehumidifiers

- $15 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity less than or equal to 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012, and
- $25 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity greater than 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012.

Appliances eligible for the credit include only those that exceed the average amount of production from the two prior calendar years for each category of appliance, rather than the present law three prior calendar years. Additionally, the special rule with respect to refrigerators is eliminated.

The aggregate credit amount allowed with respect to a taxpayer for all taxable years beginning after December 31, 2007 may not exceed $75 million, with the exception that the $200 refrigerator credit and the $250 clothes washer credit are not limited.

The term "dehumidifier" means a self-contained, electrically operated, and mechanically refrigerated encased assembly consisting of (A) a refrigerated surface that condenses moisture from the atmosphere, (B) a refrigerating system, including an electric motor, (C) an air-circulating fan, and (D) means for collecting or disposing of condensate.

The term "modified energy factor" means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

The term "gallons per cycle" means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

The term "water consumption factor" means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

EFFECTIVE DATE

The provision applies to appliances produced after December 31, 2007.

5. Five-year cost recovery for qualified energy management devices (sec. 215 of the bill and sec. 168 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[70] The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[71] Assets included in class 49.14, describing assets used in the transmission and distribution of electricity for sale and related land improvements, are assigned a class life of 30 years and a recovery period of 20 years.

REASONS FOR CHANGE

The Committee believes that qualified energy management devices are integral to the development and use of technology to conserve energy resources. Therefore, the Committee believes that investment in qualified energy management devices that are attached to customers' real property should be encouraged through a shorter recovery period for depreciation. The Committee also believes that net metering, which allows customers a credit for providing electricity to the supplier of electric energy or provider of electric energy services, should be offered by such supplier or provider at the request of the customer.

EXPLANATION OF PROVISION

The provision provides a five-year recovery period for any qualified energy management device. For purposes of the provision, a qualified energy management device means any energy management device which: (1) is installed on real property of a customer of the taxpayer; and (2) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services that provides all commercial and residential customers with net metering upon the customer's request. For purposes of the provision, net metering means allowing customers a credit for providing electricity to the supplier or provider.

An energy management device is any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that: (1) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day; (2) provides for the exchange of information between the supplier or provider and the customer's energy management device in support of time-based rates or other forms of demand response; and (3) provides data to such supplier

[70] Sec. 168.
[71] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

or provider so that the supplier or provider can provide energy usage information to customers electronically.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment.

TITLE III—REVENUE PROVISIONS

A. DENIAL OF OIL AND GAS TAX BENEFITS

1. Denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof (sec. 301 of the bill and sec. 199 of the Code)

PRESENT LAW

In general

Section 199 of the Code provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is nine percent of such income. For taxable years beginning in 2005 and 2006, the deduction is three percent of income and, for taxable years beginning in 2007, 2008 and 2009, the deduction is six percent of income. However, the deduction for a taxable year is limited to 50 percent of the wages properly allocable to domestic production gross receipts paid by the taxpayer during the calendar year that ends in such taxable year.[72]

Qualified production activities income

In general, "qualified production activities income" is equal to domestic production gross receipts (defined by section 199(c)(4)), reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts; (2) other expenses, losses, or deductions which are properly allocable to such receipts.

Domestic production gross receipts

"Domestic production gross receipts" generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property ("QPP") that was manufactured, produced, grown or extracted ("MPGE") by the taxpayer in whole or in significant part within the United States;[73] (2) any sale, exchange or other disposition, or any lease, rental or license, of qualified film produced by the taxpayer; (3) any sale, exchange or other disposition of elec-

[72] For purposes of the provision, "wages" include the sum of the amounts of wages as defined in section 3401(a) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, for taxable years beginning after December 31, 2005, designated Roth contributions (as defined in section 402A).

[73] Domestic production gross receipts include gross receipts of a taxpayer derived from any sale, exchange or other disposition of agricultural products with respect to which the taxpayer performs storage, handling or other processing activities (other than transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth or extraction of qualifying production property (whether or not by the taxpayer).

tricity, natural gas, or potable water produced by the taxpayer in the United States; (4) construction activities performed in the United States;[74] or (5) engineering or architectural services performed in the United States for construction projects located in the United States.

Congress granted Treasury broad authority to "prescribe such regulations as are necessary to carry out the purposes" of section 199.[75] In defining MPGE for purposes of section 199, Treasury described the following as MPGE activities: manufacturing, producing, growing, extracting, installing, developing, improving, and creating QPP; making QPP out of scrap, salvage, or junk material as well as from new or raw material by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles; cultivating soil, raising livestock, fishing, and mining minerals.[76]

The regulations specifically cite an example of oil refining activities in describing the "in whole or in significant part" test in determining domestic production gross receipts. QPP is generally considered to be MPGE in significant part by the taxpayer within the United States if such activities are substantial in nature taking into account all of the facts and circumstances, including the relative value added by, and relative cost of, the taxpayer's MPGE activity within the United States, the nature of the QPP, and the nature of the MPGE activity that the taxpayer performs within the United States.[77] The following example is provided in the regulations to illustrate this "substantial in nature" standard:

> X purchases from Y, an unrelated person, unrefined oil extracted outside the United States. X refines the oil in the United States. The refining of the oil by X is an MPGE activity that is substantial in nature.[78]

Electricity or natural gas transmission or distribution

Although domestic production gross receipts include the gross receipts from the production in the United States of electricity and gas, the provision excludes gross receipts from the transmission or distribution of electricity and gas. Thus, in the case of a taxpayer who owns a facility for the production of electricity (either as part of a regulated utility or an independent power facility), the taxpayer's gross receipts from the production of electricity at that facility are qualified domestic production gross receipts. However, to the extent that the taxpayer is an integrated producer that generates electricity and delivers electricity to end users, any gross receipts properly attributable to the transmission of electricity from the generating facility to a point of local distribution and any gross receipts properly attributable to the distribution of electricity to final customers are not qualified domestic production gross receipts.

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[74] For this purpose, construction activities include activities that are directly related to the erection or substantial renovation of residential and commercial buildings and infrastructure. Substantial renovation would include structural improvements, but not mere cosmetic changes, such as painting, that is not performed in connection with activities that otherwise constitute substantial renovation.

[75] Sec. 199(d)(9).

[76] Treas. Reg. sec. 1.199–3(e)(1).

[77] Treas. Reg. sec. 1.199–3(g)(2).

[78] Treas. Reg. sec. 1.199–3(g)(5), Example 1.

For example, taxpayer A owns a wind turbine that generates electricity and taxpayer B owns a high-voltage transmission line that passes near taxpayer A's wind turbine and ends near the system of local distribution lines of taxpayer C.[79] Taxpayer A sells the electricity produced at the wind turbine to taxpayer C and contracts with taxpayer B to transmit the electricity produced at the wind turbine to taxpayer C who sells the electricity to his or her customers using taxpayer C's distribution network. The gross receipts received by taxpayer A for the sale of electricity produced at the wind turbine constitute qualifying domestic production gross receipts. The gross receipts of taxpayer B from transporting taxpayer A's electricity to taxpayer C are not qualifying domestic production gross receipts. Likewise, the gross receipts of taxpayer C from distributing the electricity are not qualifying domestic production gross receipts. Also, if taxpayer A made direct sales of electricity to customers in taxpayer C's service area and taxpayer C received remuneration for the distribution of electricity, the gross receipts of taxpayer C are not qualifying domestic production gross receipts. If taxpayers A, B, and C are all related taxpayers, then taxpayers A, B, and C must allocate gross receipts to production activities, transmission activities, and distribution activities in a manner consistent with the preceding example.

The same principles apply in the case of the natural gas industry. In the case of natural gas, production activities generally are all activities involved in extracting natural gas from the ground and processing the gas into pipeline quality gas. Such activities would produce qualifying domestic production gross receipts. However, gross receipts of a taxpayer attributable to transmission of pipeline quality gas from a natural gas field (or from a natural gas processing plant) to a local distribution company's citygate (or to another customer) are not qualified domestic production gross receipts. Likewise, gas purchased by a local gas distribution company and distributed from the citygate to the local customers does not give rise to domestic production gross receipts.[80]

Drilling oil or gas wells

The Treasury regulations provide that qualifying construction activities performed in the United States include activities relating to drilling an oil or gas well.[81] Under the regulations, activities the cost of which are intangible drilling and development costs within the meaning of Treas. Reg sec. 1.612–4 are considered to be activities constituting construction for purposes of determining domestic production gross receipts.[82]

Qualifying in-kind partnerships

In general, an owner of a pass-thru entity is not treated as conducting the qualified production activities of the pass-thru entity, and vice versa. However, the Treasury regulations provide a special rule for "qualifying in-kind partnerships," which are defined as partnerships engaged solely in the extraction, refining, or proc-

[79] H.R. Rep. No. 108–755 (conference report for the American Jobs Creation Act of 2004), footnote 28 at 272.
[80] Id.
[81] Treas. Reg. sec. 1.199–3(m)(1)(i).
[82] Treas. Reg. sec. 1.199–3(m)(2)(iii).

essing of oil, natural gas, petrochemicals, or products derived from oil, natural gas, or petrochemicals in whole or in significant part within the United States, or the production or generation of electricity in the United States.[83] In the case of a qualifying in-kind partnership, each partner is treated as MPGE or producing the property MPGE or produced by the partnership that is distributed to that partner.[84] If a partner of a qualifying in-kind partnership derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of the property that was MPGE or produced by the qualifying in-kind partnership, then, provided such partner is a partner of the qualifying in-kind partnership at the time the partner disposes of the property, the partner is treated as conducting the MPGE or production activities previously conducted by the qualifying in-kind partnership with respect to that property.[85]

Alternative minimum tax

The deduction for domestic production activities is allowed for purposes of computing alternative minimum taxable income (including adjusted current earnings). The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified production activities income (as determined for the regular tax) or the alternative minimum taxable income (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.

REASONS FOR CHANGE

The Committee believes that section 199 was enacted to replace the extraterritorial income ("ETI") regime by providing new provisions to reduce the tax burden on those domestic manufacturers, including small businesses engaged in manufacturing. Taxpayers engaged in oil and gas activities were not permitted to claim ETI benefits. The Committee believes that these taxpayers should not be allowed to claim section 199 deductions.

EXPLANATION OF PROVISION

The provision excludes gross receipts of the taxpayer derived from the sale, exchange, or other disposition of oil, natural gas, or any primary product thereof from the term "domestic production gross receipts" for purposes of section 199. The term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal. The Treasury regulations define the term "primary product from oil" to mean crude oil and all products derived from the destructive distillation of crude oil, including volatile products, light oils such as motor fuel and kerosene, distillates such as naphtha, lubricating oils, greases and waxes, and residues such as fuel oil.[86] Additionally, a product or commodity derived from shale oil which would be a primary product from oil if derived from crude oil is considered a primary product from oil.[87] The term "primary product from gas" is defined as all gas and associated hy-

[83] Treas. Reg. sec. 1.199–9(i)(2).
[84] Treas. Reg. sec. 1.199–9(i)(1).
[85] Id.
[86] Treas. Reg. sec. 1.927(a)–1T(g)(2)(i).
[87] Id.

drocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefied petroleum gases such as ethane, propane, and butane, and liquid products such as natural gasoline.[88] These primary products and processes are not intended to represent either the only primary products from oil or gas or the only processes from which primary products may be derived under existing and future technologies.[89] Examples of nonprimary products include, but are not limited to, petrochemicals, medicinal products, insecticides, and alcohols.[90]

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

2. 7-year amortization of geological and geophysical expenditures for major integrated oil companies (sec. 302 of the bill and sec. 167 of the Code)

PRESENT LAW

Geological and geophysical expenditures ("G&G costs") are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. G&G costs incurred by independent producers and smaller integrated oil[91] companies in connection with oil and gas exploration in the United States may generally be amortized over two years.[92] Major integrated oil companies are required to amortize all G&G costs over five years.[93] For purposes of this provision, a major integrated oil company, with respect to any taxable year, is a producer of crude oil which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, had gross receipts in excess of one billion dollars for its last taxable year ending during the calendar year 2005, and generally has an ownership interest in a crude oil refiner of 15 percent or more.[94]

In the case of abandoned property, remaining basis may not be recovered in the year of abandonment of a property as all basis is recovered over the applicable amortization period.

REASONS FOR CHANGE

The Committee believes that a seven year period for amortization of G&G costs for major integrated oil companies is a more appropriate period for the recovery of these costs.

EXPLANATION OF PROVISION

The provision extends from five years to seven years the amortization period for G&G costs for major integrated oil companies.

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[88] Treas. Reg. sec. 1.927(a)–1T(g)(2)(ii).
[89] Treas. Reg. sec. 1.927(a)–1T(g)(2)(iii).
[90] Treas. Reg. sec. 1.927(a)–1T(g)(2)(iv).
[91] Generally, an integrated oil company is a producer of crude oil that engages in the refining or retail sale of petroleum products in excess of certain threshold amounts.
[92] Sec. 167(h)(1).
[93] Sec. 167(h)(5).
[94] Id.

EFFECTIVE DATE

The provision is effective for amounts paid or incurred after the date of enactment.

3. Require taxpayers to use an arm's-length fair-market value price for purposes of calculating FOGEI and FORI; treat industry-specific taxes as attributable solely to FOGEI (sec. 303 of the bill and sec. 907 of the Code)

PRESENT LAW

In general

Foreign tax credit

The United States taxes its citizens and residents (including U.S. corporations) on their worldwide income. Because the countries in which income is earned also may assert their jurisdiction to tax the same income on the basis of source, foreign-source income earned by U.S. persons may be subject to double taxation. In order to mitigate this possibility, the United States generally provides a credit against U.S. tax liability for foreign income taxes paid or accrued.[95] In the case of foreign income taxes paid or accrued by a foreign subsidiary, a U.S. parent corporation is generally entitled to an indirect (also referred to as a deemed paid) credit for those taxes when it receives an actual or deemed distribution of the underlying earnings from the foreign subsidiary.[96]

Foreign tax credit limitations

The foreign tax credit generally is limited to the U.S. tax liability on a taxpayer's foreign-source income. This general limitation is intended to ensure that the credit serves its purpose of mitigating double taxation of foreign-source income without offsetting the U.S. tax on U.S.-source income.[97]

In addition, this limitation is calculated separately for various categories of income, generally referred to as "separate limitation categories." The total amount of the foreign tax credit used to offset the U.S. tax on income in each separate limitation category may not exceed the proportion of the taxpayer's U.S. tax which the taxpayer's foreign-source taxable income in that category bears to its worldwide taxable income in that category. The separate limitation rules are intended to reduce the extent to which excess foreign taxes paid in a high-tax foreign jurisdiction can be "cross-credited" against the residual U.S. tax on low-taxed foreign-source income.[98]

Special limitation on credits for foreign extraction taxes and taxes on foreign oil related income

In addition to the foreign tax credit limitations that apply to all foreign tax credits, a special limitation is placed on foreign income

[95] Sec. 901.
[96] Secs. 902 and 960.
[97] Sec. 904(a).
[98] Sec. 904(d). For taxable years beginning prior to January 1, 2007, section 904(d) provides eight separate baskets as a general matter, and effectively many more in situations in which various special rules apply. The American Jobs Creation Act of 2004 reduced the number of baskets from nine to eight for taxable years beginning after December 31, 2002, and further reduced the number of baskets to two (i.e., "general" and "passive") for taxable years beginning after December 31, 2006. Pub. L. No. 108–357, sec. 404 (2004).

taxes on foreign oil and gas extraction income ("FOGEI").[99] Under this special limitation, amounts claimed as taxes paid on FOGEI of a U.S. corporation qualify as creditable taxes (if they otherwise so qualify) only to the extent they do not exceed the product of the highest marginal U.S. tax rate on corporations (presently 35 percent) multiplied by such extraction income. Foreign taxes paid in excess of that amount on such income are, in general, neither creditable nor deductible. The amount of any such taxes paid or accrued (or deemed paid) in any taxable year which exceeds the FOGEI limitation may be carried back to the immediately preceding taxable year and carried forward 10 taxable years and credited (not deducted) to the extent that the taxpayer otherwise has excess FOGEI limitation for those years.[100]

A similar special limitation applies, in theory, to foreign taxes paid on foreign oil related income ("FORI") in certain cases where the foreign law imposing such amount of tax is structured, or in fact operates, so that the amount of tax imposed with respect to foreign oil related income will generally be "materially greater," over a "reasonable period of time," than the amount generally imposed on income that is neither FORI nor FOGEI.[101] Under the FORI rules, if this theoretical limitation were to apply, then the portion of the foreign taxes on FORI so disallowed would be recharacterized as a (non-creditable) deductible expense.[102]

As a general matter, the FOGEI and FORI rules of section 907 are informed by two related but distinct concerns. First, as described by the Staff of the Joint Committee on Taxation in 1982, the rules were designed to address the perceived problem of "disguised royalties" being improperly treated as creditable foreign taxes:

When U.S. oil companies began operations in a number of major oil exporting countries, they paid only a royalty for the oil extracted since there was generally no applicable income tax in those countries. However, in part because of the benefit to the oil companies of imposing an income tax, as opposed to a royalty, those countries have adopted taxes applicable to extraction income and have labeled them income taxes. Moreover, because of this relative advantage to the oil companies of paying income taxes rather than royalties, many oil-producing nations in the post–World War II era have tended to increase their revenues from oil extraction by increasing their taxes on U.S. oil companies.[103]

In addition, the section 907 rules have also been described as intended to prevent the crediting of high foreign taxes on FOGEI and FORI against the residual U.S. tax on other types of lower-taxed foreign source income.[104] Consistent with this concern, between 1975 and 1982 the foreign tax credit rules provided a separate limitation category (or "basket") under the general section 904 limitation for foreign oil income (broadly defined to include both FORI and FOGEI within the meaning of present law section 907); this

[99] Sec. 907(a).

[100] Sec. 907(f). These carryback and carryforward rules are similar to the general foreign tax credit carryback and carryforward rules of section 904(c).

[101] Sec. 907(b).

[102] Treas. Reg. sec. 1.907(a)–0(d).

[103] Joint Committee on Taxation, *Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982*, (JCS–38–82), December 31, 1982, sec. IV.A.7.a, footnote 63.

[104] H.R. Conf. Rep. No. 103–213, at 646 (1993).

separate basket for foreign oil income was eliminated when the present law FORI rules were added and other changes were made by the Tax Equity and Reform Act of 1982.[105]

Determination of FOGEI and FORI

In general

Determination of a taxpayer's FOGEI and FORI is highly specific to the taxpayer's relevant facts and circumstances. Under section 907(c)(1), FOGEI is defined as taxable income derived from sources outside the United States and its possessions from the extraction (by the taxpayer or any other person) of minerals from oil or gas wells located outside the United States and its possessions or from the sale or exchange of assets used by the taxpayer in the trade or business of extracting those minerals.[106] The regulations provide that "gross income from extraction is determined by reference to the fair market value of the minerals in the immediate vicinity of the well."[107]

The regulations do not provide specific methods for determining the fair market value of the extracted oil or gas in the immediate vicinity of the well, but simply provide that all the facts and circumstances that exist in the particular case must be considered, including (but not limited to) facts and circumstances pertaining to the independent market value (if any) in the immediate vicinity of the well, the fair market value at the port of the foreign country, and the relationships between the taxpayer and the foreign government.[108]

Section 907(c)(2) defines FORI to include taxable income from the processing of oil and gas into their primary products, from the transportation or distribution and sale of oil and gas and their primary products, from the disposition of assets used in these activities, and from the performance of any other related service.[109]

As a result of these separate rules governing FOGEI and FORI and the interaction between them, a taxpayer's determination of the amounts of FOGEI and FORI, as well as the allocation of foreign taxes to each class of income, can have a significant impact on the taxpayer's overall U.S. tax liability.

IRS field directive

An October 12, 2004, IRS field directive (the "2004 Field Directive") sets forth guidance to international examiners and specialists on the application of what it describes as the two most commonly used methods for determining FOGEI and FORI when there is no ascertainable market price for the oil and gas in the immediate vicinity of the well, namely tie rersidual (rate of return) method and the proportionate profits method.

Under the residual (rate of return) method, the taxpayer first calculates FORI by applying an assumed after-tax rate of return to the cost of its fixed "FORI assets.". Then, because income from the production and sale of oil and gas product is equal to the sum of FORI and FOGEI, FOGEI is determined by subtracting FORI (as

[105] Pub. L. No. 97–248, sec. 211(c) (1982).
[106] Sec. 907(c)(1).
[107] Treas. Reg. sec. 1.907(c)–1(b)(2).
[108] Treas. Reg. sec. 1.907(c)–1(b)(6).
[109] Sec. 907(c)(1); Treas. Reg. sec. 1.907(c)–1(d).

calculated) from the taxpayer's total foreign income from the production and sale of oil and gas product.

Under the proportionate profits method, the taxpayer allocates total income from the production and sale of the oil or gas product between FOGEI and FORI based on the relative costs of the FOGEI and FORI activities.

Under either method, the taxpayer must determine its total income from the production and sale of oil and gas product, and must distinguish between costs and assets classified as relating to FOGEI and those relating to FORI. Under the residual (rate of return) method, the taxpayer must also determine appropriate rates of return for FORI assets. The 2004 Field Directive sets forth examples of FOGEI assets[110] and FORI assets,[111] and further provides that assets that support both FOGEI and FORI may be allocated by any reasonable method.[112]

Apportionment of foreign taxes between FOGEI and FORI

Under the Code, foreign taxes will be treated as oil and gas extraction taxes (and thus subject to the FOGEI limitation) to the extent they are paid or accrued during the taxable year with respect to FOGEI[113] Treasury Regulations generally provide that, if a relevant foreign country imposes and collects foreign taxes on a single tax base that consists partly of amounts classified as FOGEI and partly of amounts classified as FORI, then such foreign taxes, shall be allocated in proportion to such amounts of FORI and FOGEI. For instance, suppose,that a foreign country ("County X") has a corporate income tax system which taxes, at an aggregate rate of 40 percent, all Country X-source oil and gas income (broadly defined, so that all of the taxpayer's Country X-source income will be subject to this tax rate); suppose further that the taxpayer's total Country X taxable income (which is assumed here to be. calculated identically for U.S. and Country X tax purposes) is $4,000, resulting in a Country X tax of $1,600. This $1,600 of tax will be apportioned between FOGEI and FORI in proportion to the relevant amounts of the taxpayer's Country X FOGEI and FORI.

REASONS FOR CHANGE

The Committee recognizes that section 907 is currently being interpreted in a manner which affords taxpayers great flexibility to allocate income between FOGEI and FORI. Moreover, because the present-law FORI limitation rules are vague and subjective, the Committee is concerned that the FORI limitation rarely operates in

[110] Memorandum for Industry Directors ("Field Directive on IRC 907 Evaluating Taxpayer Methods of Determining Foreign Oil and Gas Extraction Income (FOGEI) and Foreign Oil Related Income (FORI)"), October 12, 2004 (Tax Analysts Doc 2004–23010; 2004 TNT 233–8). By its terms, the 2004 Field Directive "is not an official pronouncement of the law or the Service's position and cannot be used, cited, or relied upon as such."

[111] Examples of FOGEI assets include wells, wellheads, and pumping equipment; slug catchers, separators, treaters, emulsion breakers and stock tanks needed to obtain marketable crude (for oil production); primary separation and dehydration equipment needed to arrive at a gaseous stream in which hydrocarbons may be recovered (for gas production); lines interconnecting the above; the infrastructure-type equipment to provide for the operation of the above; and structures to physically support the above (such as offshore platforms).

[112] Examples of FORI assets include lines that carry natural gas beyond the primary separator and dehydration equipment and towards its sales point, and compressors needed to transport through these lines; lines that carry marketable crude oil from the premises, as well as pumps needed to transport crude oil through these lines; and assets used to process crude oil and natural gas.

[113] Sec. 907(c)(5).

practice to limit the ability of taxpayers to claim credits for taxes attributed to FORI. As a result, the Committee believes that taxpayers may be allocating income in a manner which results in an inappropriate understatement of FOGEI, thereby largely circumventing the section 907 limitation rules.

EXPLANATION OF PROVISION

Under the provision, taxpayers are no longer permitted to calculate FOGEI and FORI using the methods described in the 2004 Field Directive; instead, taxpayers must identify the first point in time at which the oil or gas has a fair market value which can be determined on the basis of either (i) a transfer, in an arm's-length transaction, of such oil or gas to an unrelated third party by the taxpayer, or (ii) the arrival of such oil or gas at a location at which the fair market value is readily ascertainable by reason of transactions among unrelated third parties with respect to oil or gas that is substantially identical to such oil or gas (taking into account source, location, quality, and chemical composition). Thus, for example, where a taxpayer extracts crude oil at an offshore platform (and no readily ascertainable fair market value can be determined based upon comparable arm's-length sales in the immediate vicinity of the wellhead) and transports the crude oil via underwater pipelines (owned by the taxpayer) to a port facility (where other unrelated parties are engaged in arm's-length purchase and sale transactions involving substantially identical crude oil), the taxpayer is required to use the independent fair market value of the crude oil at the port facility for purposes of calculating FOGEI. In such circumstances, the taxpayer is permitted to deduct the cost of transporting the crude oil to the port facility (as measured by its operating expenses attributable to the transportation activity, including depreciation of the pipeline) from its gross income (calculated with reference to the relevant independent fair market value so determined) to determine overall FOGEI.

In addition, the provision also requires that, where a foreign country collects taxes that are limited in their application to taxpayers engaged in oil or gas activities, such a taxpayer is required to treat the entire amount of such taxes as oil and gas extraction taxes subject to the FOGEI limitation (rather than apportioning such taxes between FOGEI and FORI). In such a case, the taxpayer treats the entire amount of income on which such taxes are imposed as FOGEI.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2007.

B. Clarification of Eligibility for Certain Fuel Credits

1. Clarification of eligibility for renewable diesel credit for fuel co-produced with petroleum products (sec. 311 of the bill and secs. 40A and 6426 of the Code)

PRESENT LAW

Renewable diesel

The Code provides a tax incentive of $1.00 per gallon for renewable diesel. This incentive may be taken as an income tax credit, an excise tax credit, or as a payment from the Secretary.[114] "Renewable diesel" means diesel fuel that (1) is derived from biomass (as defined in section 45K(c)(3)) using a thermal depolymerization process; (2) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. sec. 7545); and (3) meets the requirements of the American Society of Testing and Materials ("ASTM") D975 or D396. ASTM D975 provides standards for diesel fuel suitable for use in diesel engines. ASTM D396 provides standards for fuel oil intended for use in fuel-oil burning equipment, such as furnaces. Biomass, as defined in section 45K(c)(3), is any organic material other than (1) oil and natural gas (or any product thereof), and (2) coal (including lignite) or any product thereof

Pursuant to IRS Notice 2007–37, the Secretary provided that fuel produced as a result of co-processing biomass and petroleum feedstock ("co-produced fuel") qualifies for the renewable diesel incentives to the extent of the fuel attributable to the biomass in the mixture. In co-produced fuel, the fuel attributable to the biomass does not exist as a distinct separate quantity prior to mixing.

Liquid hydrocarbons from biomass

The Code provides an excise tax credit 50 cents per gallon for certain alternative fuels.[115] Included among the qualified alternative fuels is a provision for liquid hydrocarbons produced from biomass. Neither the Code, nor Treasury guidance define "liquid hydrocarbons." However, fuel that is ethanol, methanol, biodiesel, or renewable diesel does not qualify as an alternative fuel.

REASONS FOR CHANGE

The Committee believes that the tax incentives for renewable diesel should be used to encourage the building of new plants to provide new refining capacity for renewable diesel. The incentive was not intended to subsidize existing petroleum refining capacity. In the opinion of the Committee, IRS Notice 2007–37, which permits the co-processing of biomass with petroleum feedstocks is inconsistent with the statutory requirement that renewable diesel be derived from biomass.

The Committee is aware that there is some uncertainty as to whether a "liquid hydrocarbon from biomass" is allowed to contain oxygen or must consist exclusively of hydrogen and carbon. The in-

[114] Secs. 40A, 6426(c), and 6427(e). For purposes of the Code, renewable diesel is generally treated as biodiesel.

[115] Sec. 6426(d). This incentive also can be taken as a payment under section 6427(e).

tent of the provision is to cover generally liquid fuels from biomass, and so the provision makes a technical correction to that effect.

EXPLANATION OF PROVISION

The provision overrides IRS Notice 2007–37 with respect to co-produced fuel, providing that renewable diesel does not include any fuel derived from co-processing biomass with a feedstock that is not biomass. The deminis use of catalysts, such as hydrogen, is permitted under the provision. The provision also clarifies the alternative fuel credit by replacing the term "liquid hydrocarbons" with "liquid fuel." The provision provides that alcohol, biodiesel, renewable diesel, and qualified mixtures thereof (as subsections (b) and (c) of section 6426 and sections 40 and 40A) do not qualify for the alternative fuel and alternative fuel mixture credit.

EFFECTIVE DATE

The provision is generally effective for fuel produced and sold or used after June 30, 2007. The alternative fuel credit clarification is effective as if included in section 11113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

2. Clarification that credits for fuel are designed to provide an incentive for United States production (sec. 312 of the bill, and secs. 40, 40A, 6426 and 6427 of the Code)

PRESENT LAW

The Code provides per-gallon incentives relating to the following qualified fuels: alcohol (including ethanol), biodiesel (including agri-biodiesel), renewable diesel, and certain alternative fuels.[116] The incentives may be taken as an income tax credit, excise tax credit or payment. The provisions are coordinated so that a gallon of qualified fuel is only taken into account once. If the qualified fuel is part of a qualified fuel mixture, the incentives apply only to the amount of qualified fuel in the mixture.

For alcohol, other than ethanol, the amount of the credit is 60 cents per gallon. For ethanol, the credit is 51 cents per gallon. The alcohol incentives expire after December 31, 2010. The amount of the credit for biodiesel is 50 cents. For agri-biodiesel and renewable diesel, the credit amount is $1.00 per gallon. The biodiesel, agri-biodiesel and renewable diesel incentives expire after December 31, 2008. The credit amount for alternative fuels is 50 cents per gallon. The incentives for alternative fuels expire after September 30, 2009 (after September 30, 2014, in the case of liquefied hydrogen).

The Code is silent as to the geographic limitations on where the fuel must ber produced, used, or sold. For imported ethanol, there is an offsetting tariff of 54 cents per gallon. This tariff expires January 1, 2009.

REASONS FOR CHANGE

Alternative fuels are a significant component of encouraging the use of renewable, non-petroleum fuel sources and establishing the nation's independence from foreign oil. The fuel incentives were not intended to subsidize fuels with no nexus to the United States. The

[116] See secs. 40, 40A, 6426, and 6427(e).

Committee believes it is important to encourage the domestic production of alternative fuels and build a domestic industry to continue alternative fuel production. The Committee also believes that subsidized domestic fuels should be used domestically and not exported. Exported fuels do not contribute to establishing the country's fuel independence, therefore, the provision denies the fuel credits and payments to fuel that are not for consumption as a fuel in the United States.

EXPLANATION OF PROVISION

The provision makes a technical correction to clarify that foreign-produced fuel that is used or sold for use outside of the United States is ineligible for the per-gallon tax incentives relating to alcohol, biodiesel, renewable diesel, and alternative fuel.

On a prospective basis, the provision limits the per-gallon tax incentives for biodiesel (including agri-biodiesel), renewable diesel, and alternative fuels to fuels produced in the United States that are used or sold for use in the United States. For this purpose, "United States" includes any possession of the United States. The taxpayer must obtain a certification from the producer of the fuel that identifies the product produced and the location of such production. For example, whether part of a qualified mixture or alone, biodiesel only qualifies for the credit if the biodiesel is produced in the United States for consumption in the United States. Thus, foreign-produced biodiesel, although imported into the United States for consumption in the United States, does not qualify for the credit. Similarly, domestically produced biodiesel sold for export does not qualify for the credit.

EFFECTIVE DATE

For foreign produced alcohol and biodiesel used outside of the United States, the provision is effective as if included in section 301 of the American Jobs Creation Act of 2004; for foreign produced renewable diesel used outside of the United States, the provision is effective as if included in section 1346(c) of the Energy Policy Act of 2005; and for foreign produced alternative fuel used outside of the United States, the provision is effective as if included in section 11113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The provision, as it relates to the restriction of the payments and credits to fuel both produced and used in the United States is effective for fuel produced, sold or used after the date of enactment.

TITLE IV—OTHER PROVISIONS

A. STUDIES

1. Carbon audit of provisions of the Internal Revenue Code of 1986 (sec. 401 of the bill)

PRESENT LAW

Present law does not require a review of the Code for provisions that affect carbon emissions and climate. The National Research Council is part of the National Academies. The National Academy of Sciences serves to investigate, examine, experiment and report

upon any subject of science whenever called upon to do so by any department of the government. The National Research Council was organized by the National Academy of Sciences in 1916 and is its principal operating agency for conducting science policy and technical work.

REASONS FOR CHANGE

The Committee believes it is important to identify provisions in the Code which affect carbon and other greenhouse emissions. This study will provide scientifically-based information to aid decision makers in the formulation of tax policies aimed at reducing emissions and mitigating climate change.

EXPLANATION OF PROVISION

The provision directs the Secretary to request that the National Academy of Sciences undertake a comprehensive review of the Code to identify the types of and specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to generally estimate the magnitude of those effects.[117] The report should identify the provisions of the Code that are most likely to have significant effects on carbon emissions and discuss the importance of controlling carbon and greenhouse gas emissions as part of a comprehensive national strategy for reducing U.S. contributions to global climate change.[118] The report will describe the processes by which the tax provisions affect emissions (both directly and indirectly), assess the relative influence of the identified provisions, and evaluate the potential for changes in the Code to reduce carbon emissions. The report also will identify other provisions of the Code that may have significant influence on other factors affecting climate change.

The Secretary is to submit to Congress a report containing the results of the National Academy of Sciences review within two years of the date of enactment. The provision authorizes the appropriation of $1,500,000 to carry out the review.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Comprehensive study of biofuels (sec. 402 of the bill)

PRESENT LAW

The National Academy of Sciences serves to investigate, examine, experiment and report upon any subject of science whenever called upon to do so by any department of the government. The National Research Council is part of the National Academies. The National Research Council was organized by the National Academy of Sciences in 1916 and is its principal operating agency for conducting science policy and technical work.

[117] A detailed quantitative analysis is not required. It is envisioned that the review will catalogue and provide a general analysis of the effect of each identified provision.

[118] "Greenhouse gas emissions" include, but are not limited to, methane, nitrous oxide, ozone, and fluorinated hydrocarbons.

REASONS FOR CHANGE

The Committee believes that it is important to have an analysis of the current and projected capabilities for biofuel production and the effects of such production on non-fuel industries and commodities.

EXPLANATION OF PROVISION

The provision requires the Secretary, in consultation with the Department of Energy and the Department of Agriculture and the Environmental Protection Agency, to enter into an agreement with the National Academy of Sciences to produce an analysis of current scientific findings to determine:

1. Current biofuels production, as well as projections for future production;
2. The maximum amount of biofuels production capable on U.S. farmland;
3. The domestic effects of a dramatic increase in biofuels production on, for example, (a) the price of fuel, (b) the price of land in rural and suburban communities, (c) crop acreage and other land use, (d) the environment, due to changes in crop acreage, fertilizer use, runoff, water use, emissions from vehicles utilizing biofuels, and other factors, (e) the price of feed, (f) the selling price of grain crops, (g) exports and imports of grains, (h) taxpayers, through cost or savings to commodity crop payments, and (i) the expansion of refinery capacity;
4. The ability to convert corn ethanol plants for other uses, such as cellulosic ethanol or biodiesel;
5. A comparative analysis of corn ethanol versus other biofuels and renewable energy sources, considering cost, energy output, and ease of implementation; and
6. The need for additional scientific inquiry, and specific areas of interest for future research.

The National Academy of Sciences shall issue an initial report of its findings to the Congress not later than three months after the date of enactment, and a final report not later than six months after the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 2776, the "Renewable Energy and Energy Conservation Tax Act of 2007."

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, as amended, was ordered favorably reported by a roll call vote of 24 yeas to 16 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel	X			Mr. McCrery		X	
Mr. Stark	X			Mr. Herger		X	
Mr. Levin	X			Mr. Camp		X	
Mr. McDermott	X			Mr. Ramstad	X		
Mr. Lewis (GA)	X			Mr. Johnson		X	
Mr. Neal	X			Mr. English		X	
Mr. McNulty	X			Mr. Weller		X	
Mr. Tanner	X			Mr. Hulshof		X	
Mr. Becerra				Mr. Lewis (KY)		X	
Mr. Doggett	X			Mr. Brady		X	
Mr. Pomeroy	X			Mr. Reynolds		X	
Ms. Tubbs Jones	X			Mr. Ryan		X	
Mr. Thompson	X			Mr. Cantor		X	
Mr. Larson	X			Mr. Linder		X	
Mr. Emanuel	X			Mr. Nunes		X	
Mr. Blumenauer	X			Mr. Tiberi		X	
Mr. Kind	X			Mr. Porter		X	
Mr. Pascrell	X						
Ms. Berkley	X						
Mr. Crowley	X						
Mr. Van Hollen	X						
Mr. Meek	X						
Ms. Schwartz	X						
Mr. Davis	X						

VOTES ON AMENDMENTS

A roll call vote was conducted on the following amendments to the Chairman's Amendment in the Nature of a Substitute.

Mr. Herger offered an amendment to the Chairman's amendment in the nature of a substitute which would allow qualified energy conservation bond proceeds to be used to build new or expand existing refinery capacity, or to build and maintain oil and gas transmission lines. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Johnson offered an amendment to the Chairman's amendment in the nature of a substitute which would repeal the new re-

quirement that Davis-Bacon wage and benefit mandates apply to all tax credit bonds under section 54A of the Internal Revenue Code. The amendment was rejected by a roll call vote of 12 yeas to 28 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English		X	
Mr. McNulty		X		Mr. Weller		X	
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds		X	
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes		X	
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter		X	
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwarz		X					
Mr. Davis		X					

Mr. English offered an amendment to the Chairman's amendment in the nature of a substitute which would provide a 15-year recovery period for property used in the transmission or distribution of electricity for sale. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Weller offered an amendment to the Chairman's amendment in the nature of a substitute which would provide an extension of

the new and existing homes tax credit. The amendment was rejected by a roll call vote of 16 yeas to 23 nays and 1 present. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson			X	Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Hulshof offered an amendment to the Chairman's amendment in the nature of a substitute which would prohibit the tax credit components of the qualified energy conservation bonds and the residential energy efficiency assistance bonds from being claimed by anyone other than the holder of the underlying bond. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Brady offered an amendment to the Chairman's amendment in the nature of a substitute which would condition the repeal of the section 199 manufacturing deduction for income attributable to the domestic production of oil, natural gas, or primary products thereof. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Reynolds offered an amendment to the Chairman's amendment in the nature of a substitute which would strike public education campaign use of proceeds of qualified energy conservation bonds. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Ryan offered an amendment to the Chairman's amendment in the nature of a substitute which would place an income limitation on recipients of the proceeds from qualified energy conservation bonds or qualified residential energy efficiency assistance bonds. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Lewis of Kentucky offered an amendment for Mr. Nunes to the Chairman's amendment in the nature of a substitute regarding investment tax credit for coal-to-liquid fuels projects and, expensing for coal-to-liquid fuels projects. The amendment was rejected by a roll call vote of 14 yeas to 26 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery		X	
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Herger offered an amendment to the Chairman's amendment in the nature of a substitute which would require certification by the Secretary of the Treasury that this Act would reduce the price of gasoline and measurably reduce green house gas emissions. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Johnson offered an amendment to the Chairman's amendment in the nature of a substitute which would delete all of the revenue raising provisions in the bill. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. English offered an amendment with Mr. Weller to the Chairman's amendment in the nature of a substitute which would allow the section 45 production tax credit to be earned in excess of 35% of the facility's cost. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Weller offered an amendment to the Chairman's amendment in the nature of a substitute which would provide a tax credit for certain flexible fuel hybrid vehicles. The amendment was rejected by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery		X	
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Reynolds offered an amendment to the Chairman's amendment in the nature of a substitute which would expand eligibility

for local government allocations of qualified energy conservation bonds to include small- and mid-sized cities and counties. The amendment was rejected by a roll call vote of 18 yeas to 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner	X			Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Nunes offered an amendment to the Chairman's amendment in the nature of a substitute which would exempt independent and small producers from repeal of the Sec. 199 deduction for income attributable to domestic production of oil, natural gas, or primary products thereof. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad		X	
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Weller offered an amendment to the Chairman's amendment in the nature of a substitute which would expand the research tax credit to promote energy efficient transportation technologies. The amendment was rejected by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery		X	
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Weller offered an amendment to the Chairman's amendment in the nature of a substitute concerning expensing for refueling property. The amendment was rejected by a roll call vote of 15 yeas to 25 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery		X	
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. Brady offered an amendment to the Chairman's amendment in the nature of a substitute which would require the Secretary of

the Treasury to study the economic effects of the Act. The amendment was rejected by a roll call vote of 17 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan	X		
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

Mr. English offered an amendment to the Chairman's amendment in the nature of a substitute which would create investment tax credit for in-situ oil shale extraction property and allow for expensing of oil shale extraction equipment. The amendment was rejected by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Rangel		X		Mr. McCrery	X		
Mr. Stark		X		Mr. Herger	X		
Mr. Levin		X		Mr. Camp	X		
Mr. McDermott		X		Mr. Ramstad	X		
Mr. Lewis (GA)		X		Mr. Johnson	X		
Mr. Neal		X		Mr. English	X		
Mr. McNulty		X		Mr. Weller	X		
Mr. Tanner		X		Mr. Hulshof	X		
Mr. Becerra				Mr. Lewis (KY)	X		
Mr. Doggett		X		Mr. Brady	X		
Mr. Pomeroy		X		Mr. Reynolds	X		
Ms. Tubbs Jones		X		Mr. Ryan		X	
Mr. Thompson		X		Mr. Cantor	X		
Mr. Larson		X		Mr. Linder	X		
Mr. Emanuel		X		Mr. Nunes	X		
Mr. Blumenauer		X		Mr. Tiberi	X		
Mr. Kind		X		Mr. Porter	X		
Mr. Pascrell		X					
Ms. Berkley		X					
Mr. Crowley		X					
Mr. Van Hollen		X					
Mr. Meek		X					
Ms. Schwartz		X					
Mr. Davis		X					

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 2776 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2007–2012:

ESTIMATED REVENUE EFFECTS OF THE TAX PROVISIONS CONTAINED IN H.R. 2776, THE "RENEWABLE ENERGY AND ENERGY CONSERVATION TAX ACT OF 2007," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2007 - 2017

[Millions of Dollars]

Provision	Effective	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007-12	2007-17
I. Production Incentives														
1. Extension and modification of renewable energy credit - extend by four years the section 45 placed-in-service period (excluding refined coal, Indian coal, and solar facilities); place cap on annual allowable credit; add marine and hydrokinetic energy as qualified energy resource	[1]	---	---	-49	-197	-419	-690	-917	-1,024	-1,056	-1,093	-1,134	-1,356	-6,580
2. Extension and modification of energy credit - extend 30% solar and fuel cell credits; increase cap on fuel cells to $1,500 per half kilowatt; remove the public utility restriction for the energy credit; and allow energy credit to be taken against the AMT (sunset 12/31/16)	[2]	-5	-12	-45	-89	-78	-60	-59	-60	-60	-63	-35	-286	-563
3. Modifications to clean renewable energy bonds ($2 billion of bond allocation) [3]	bia DOE	[4]	-2	-10	-23	-41	-63	-79	-83	-83	-83	-83	-139	-550
4. Extension and modification of special rule to implement FERC and State electric restructuring policy (sunset 12/31/09)	[5]	---	-229	-290	-39	90	90	90	90	109	72	16	-377	---
5. Repeal of dollar limitation and allowance against alternative minimum tax for residential solar and fuel cell property credit	ea DOE & tyba DOE	---	-51	-39	---	---	---	---	---	---	---	---	-89	-89
Total of Production Incentives		**-5**	**-294**	**-433**	**-348**	**-448**	**-723**	**-965**	**-1,077**	**-1,090**	**-1,167**	**-1,236**	**-2,247**	**-7,782**
II. Conservation Provisions														
A. Transportation														
1. Credit for plug-in hybrid vehicles; nonbusiness alternative motor vehicle credit treated as personal credit	tyba 12/31/07 & tyba 12/31/06	---	---	---	---	-31	-158	-187	-241	-301	-175	-127	-189	-1,220
2. Extension and modification of alternative fuel vehicle refueling property credit (sunset 12/31/10)	[6]	-3	-15	-21	-62	-49	-21	-13	-6	1	3	4	-172	-184
3. Extension and modification of credits for biodiesel and renewable diesel (sunset 12/31/10)	[7]	---	---	-94	-144	-41	---	---	---	---	---	---	-279	-279
4. Credit for cellulosic alcohol (sunset 12/31/10)	APA 12/31/07	---	---	-1	-17	-6	---	---	---	---	---	---	-24	-24
5. Extend transportation fringe benefit to bicycle commuters	tyba 12/31/07	---	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-10
6. Modification of limitation on automobile depreciation	ppisa 12/31/07	---	23	105	163	229	98	31	32	34	35	35	618	786
7. Restructure New York Liberty Zone incentives - (credits begin 2008; New York Liberty Zone incentives sunset date of enactment) [8]	DOE	---	-146	66	-321	-203	-172	-172	-172	-172	-172	-172	-775	-1,636
B. Other Conservation Provisions														
1. Qualified energy conservation bonds ($3.6 billion allocation)	bia DOE	[4]	-7	-40	-97	-153	-184	-195	-196	-196	-196	-196	-481	-1,460
2. Qualified residential energy efficiency assistance bonds ($2.4 billion allocation)	bia DOE	[4]	-4	-18	-49	-88	-114	-126	-126	-126	-126	-126	-273	-903

Provision	Effective	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007-12	2007-17
3. Extension of energy efficient commercial buildings deduction (sunset 12/31/13)	DOE	---	---	-114	-183	-193	-197	-202	-59	17	15	13	-687	-901
4. Extension and modification of energy efficient appliance credit for appliances produced after 2007	apa 12/31/07	---	-109	-108	-83	-40	-10	-3	---	---	---	---	-348	-351
5. 5-year applicable recovery period for depreciation of qualified energy management devices	ppisa DOE	---	-13	-38	-73	-109	-138	-160	-178	-191	-202	-213	-371	-1,315
Total of Conservation Provisions		**-3**	**-272**	**-264**	**-867**	**-685**	**-897**	**-1,028**	**-947**	**-935**	**-819**	**-783**	**-2,985**	**-7,497**
III. Revenue Raising Provisions														
A. Denial of Oil and Gas Tax Benefits														
1. Deny section 199 deduction for income attributable to oil, natural gas, or primary products thereof	tyba 12/31/07	---	318	734	897	1,079	1,160	1,247	1,340	1,440	1,548	1,664	4,188	11,427
2. 7-year amortization of geological and geophysical expenditures for major integrated oil companies	apoia DOE	1	4	9	15	21	24	18	8	2	1	1	75	103
3. Clarification of determination of foreign oil and gas extraction income:														
a. Require arm's-length price for FOGEI	tyba DOE	3	135	272	276	280	283	286	288	290	292	293	1,249	2,698
b. Treat petroleum taxes as taxes on FOGEI	tyba DOE	1	43	87	88	90	91	92	92	93	93	94	400	864
B. Clarification of Eligibility for Certain Fuel Credits														
1. Disallow credit to renewable diesel co-produced with petroleum products	fpsoua 6/30/07 [9]	---	59	25	---	---	---	---	---	---	---	---	85	85
2. Clarification that Credits for Fuels Are Designed to Provide an Incentive for United States Production:														
a. Deny certain fuel credits for fuel with insufficient nexus to the United States	fpsoua DOE	3	29	32	34	10	---	---	---	---	---	---	109	109
b. Deny certain fuel credits for fuels produced and used outside the United States	[10]	*No Revenue Effect*												
Total of Revenue Raising Provisions		**8**	**588**	**1,159**	**1,310**	**1,480**	**1,558**	**1,643**	**1,728**	**1,825**	**1,934**	**2,052**	**6,106**	**15,286**
IV. Other Provisions														
1. Carbon audit	DOE	*No Revenue Effect*												
2. Comprehensive study of biofuels production	DOE	*No Revenue Effect*												
Total of Other Provisions		***No Revenue Effect***												
NET TOTAL		**[4]**	**22**	**462**	**95**	**347**	**-62**	**-350**	**-296**	**-200**	**-52**	**33**	**874**	**7**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be July 1, 2007.

Legend for "Effective" column:

APA = alcohol produced after
apa = appliances produced after
apoia = amounts paid or incurred after
bia = bonds issued after
DOE = date of enactment
ea = expenditures after
fpsoua = fuel produced, and sold or used, after
ppisa = property placed in service after
tyba = taxable years beginning after

[Footnotes for the Table appear on the following page]

Footnotes for the Table:

[1] The provision is generally effective for property originally placed in service after December 31, 2008. The repeal of the credit phaseout is effective for taxable years ending after December 31, 2008. The production credit for marine renewables is effective for electricity produced and sold after the date of enactment in taxable years ending after the date of enactment.

[2] The provision is generally effective on the date of enactment. The increase in the fuel cell cap and the removal of the public utility restriction apply to periods after the date of Committee action, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Code (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990). The allowance of the credit against the alternative minimum tax is effective for taxable years beginning after the date of enactment.

[3] Credit rate set at 70 percent of the credit rate that would allow bonds to be issued without discount or premium.

[4] Loss of less than $500,000.

[5] The extension applies to qualified sales or other dispositions after December 31, 2007. The change in the definition of an independent transmission company is effective as if included in the American Jobs Creation Act of 2004. The exception for property located outside the United States applies to transactions after the date of enactment.

[6] Effective for property placed in service after the date of enactment in taxable years ending after the date of enactment.

[7] The extension applies to fuel produced, and sold or used, after the date of enactment. The modifications apply to fuel produced, and sold or used, after the date that is 30 days after the date of enactment.

[8] Estimate includes an increase in outlays of $1,721 million for fiscal years 2008 through 2017.

[9] The modification of the alternative fuel excise tax credit (changing "liquid hydrocarbons" to "liquid fuel") is effective as if included in section 11113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

[10] For foreign produced alcohol and biodiesel used outside of the United States, the proposal is effective as if included in section 301 of the American Jobs Creation Act of 2004; for foreign produced renewable diesel used outside of the United States, the proposal is effective as if included in section 1346(c) of the Energy Policy Act of 2005; and for foreign produced alternative fuel used outside of the United States, the proposal is effective as if included in section 11113 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

H.R. 2776—Renewable Energy and Energy Conservation Tax Act of 2007

Summary: H.R. 2776 would make several changes to energy tax law. The changes would include extending and creating certain energy tax credits, establishing energy tax bonds, and modifying rules related to oil and gas taxes.

The Joint Committee on Taxation (JCT) estimates that enacting H.R. 2776 would decrease revenues by less than $500,000 in 2007, increase revenues by $1.8 billion over the 2007–2012 period, and increase revenues by $1.7 billion over the 2007–2017 period. JCT also estimates that the bill would increase outlays by $876 million over the 2007–2012 period and by $1.7 billion over the 2007–2017 period. The Congressional Budget Office (CBO) estimates that implementing the bill would cost $3 million to $4 million annually, subject to appropriation of the necessary amounts.

JCT has reviewed the tax provisions of H.R. 2776 and has determined that they contain two private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA): the denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof; and the clarification of determination of foreign oil and gas extraction income. The costs required to comply with each federal private-sector mandate generally are no greater than the aggregate estimate budget effects of the provision. The aggregate direct costs of the private-sector mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in each year beginning in fiscal year 2008.

JCT has also determined that the tax provisions of the bill contain no intergovernmental mandates. CBO has determined that the non-tax provisions in H.R. 2776 contain no private-sector or intergovernmental mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of the bill over the 2007–2017 period is shown in the following table. The budgetary impact of this legislation falls within function 800 (general government).

	By fiscal year, in millions of dollars—												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2007–2012	2007–2017
CHANGES IN REVENUES													
Title I: Production Incentives	−5	−294	−433	−348	−448	−723	−965	−1,077	−1,090	−1,167	−1,236	−2,247	−7,782
Title II: Conservation Provisions	−3	−103	−264	−529	−485	−728	−859	−778	−766	−650	−614	−2,109	−5,775
Title III: Revenue Raising Provisions	8	588	1,159	1,310	1,480	1,558	1,643	1,728	1,825	1,934	2,052	6,106	15,286
Total Changes	*	191	462	433	547	107	−181	−127	−31	117	202	1,750	1,729
CHANGES IN DIRECT SPENDING													
Title II: Conservation Provisions:													
Estimated Budget Authority	0	169	0	338	200	169	169	169	169	169	169	876	1,721
Estimated Outlays	0	169	0	338	200	169	169	169	169	169	169	876	1,721
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Title II: Conservation Provisions:													
Estimated Authorization Level	0	2	3	3	3	3	3	3	3	3	3	14	30
Estimated Outlays	0	2	3	3	3	3	3	3	3	3	3	14	30
Title IV: Other Provisions:													
Estimated Authorization Level	0	2	1	0	0	0	0	0	0	0	0	3	3
Estimated Outlays	0	2	1	0	0	0	0	0	0	0	0	3	3
Total Changes:													
Estimated Authorization Level	0	4	4	3	3	3	3	3	3	3	3	17	33
Estimated Outlays	0	4	4	3	3	3	3	3	3	3	3	17	33

Notes: Numbers may not sum to totals because of rounding.
*=loss of less than $500,000.
Sources: Joint Committee on Taxation and Congressional Budget Office.

Basis of estimate: For this estimate, CBO and JCT assume that the bill will be enacted by July 1, 2007. JCT provided the estimates of changes in revenues and direct spending. CBO provided the estimates of changes in spending subject to appropriation.

Revenues and direct spending

The legislation would make several energy tax law changes. JCT estimates that enacting H.R. 2776 would reduce revenues by less than $500,000 in 2007, increase revenues by $1.8 billion over the 2007–2012 period, and increase revenues by $1.7 billion over the 2007–2017 period.

Title I includes a provision that would extend and modify the renewable energy tax credit. Currently, the production of electricity from certain energy resources (such as wind and solar energy) is allowed an income tax credit that is set to expire for property placed in service after 2008. H.R. 2776 would extend the credit for new property through December 31, 2012, and it would expand the definition of qualified energy resources. Additionally, rather than phasing out the credit (as under current law), the bill would place an annual limit on the total credits that may be claimed by a facility. JCT estimates that this provision would reduce revenues by $1.4 billion over the 2007–2012 period and by $6.6 billion over the 2007–2017 period. All in all, title I would reduce revenues, JCT estimates, by $5 million in 2007, by $2.2 billion over the 2007–2012 period, and by $7.8 billion over the 2007–2017 period.

Title II, JCT estimates, would reduce revenues by $3 million in 2007, by $2.1 billion over the 2007–2012 period, and by $5.8 billion over the 2007–2017 period. First, the title would allow a credit for plug-in hybrid vehicles, which JCT estimates would reduce revenues by $189 million over the 2007–2012 period and by $1.2 billion over the 2007–2017 period. Second, it would create energy conservation bonds to be used, for example, to finance expenditures made to reduce energy consumption. JCT estimates that this provision would reduce revenues by less than $500,000 in 2007, by $481 million over the 2007–2012 period, and by $1.5 billion over the 2007–2017 period. Third, the bill also would allow a five-year recovery period for time-based meters that measure and record electricity use at different points in the day and provides that data to the supplier or provider. Those meters are allowed a 20-year recovery period under current law. JCT estimates that this provision would reduce revenues by $371 million over the 2007–2012 period and by $1.3 billion over the 2007–2017 period.

Among other provisions, title II would restructure certain New York Liberty Zone tax incentives, which were enacted following the September 11, 2001, terrorist attacks. First, the bill would repeal the provisions that allow accelerated depreciation for certain property in the Liberty Zone. JCT estimates that repealing those provisions would increase revenue by $101 million over the 2007–2012 period and by $86 million over the 2007–2017 period. Second, the bill would provide the city of New York and the state of New York with tax credits for a certain amount of their expenditures made for transportation infrastructure related to the Liberty Zone. The credits could be used against the income taxes that the jurisdictions withhold from the paychecks of their employees and remit to the Internal Revenue Service. Because the jurisdictions do not owe

federal income tax liability, the credits are considered federal spending. JCT estimates that instituting the credits would increase direct spending by $876 million over the 2007–2012 period and by $1.7 billion over the 2007–2017 period.

Title III includes multiple provisions that raise revenue. First, the bill would deny a tax deduction under section 199 of the Internal Revenue Code to any income from the sale or exchange of oil, natural gas, or related products, beginning in 2008. JCT estimates that this would increase revenues by $4.2 billion over the 2007–2012 period and by $11.4 billion over the 2007–2017 period.

Second, H.R. 2776 would modify the methods that transnational firms use to calculate their foreign oil and extraction income and their foreign oil related income. JCT estimates that these provisions would increase revenues by $4 million in 2007, by $1.6 billion over the 2007–2012 period, and by $3.6 billion over the 2007–2017 period. JCT estimates that title III as a whole would increase revenue by $8 million in 2007, by $6.1 billion over the 2007–2012 period, and by $15.3 billion over the 2007–2017 period.

Spending subject to appropriation

Section 205 would expand the use of federal employee transportation fringe benefits to include bicycle commuters. The provision would allow up to $20 per month for repairs, upgrades, and storage to employees who regularly use a bicycle for commuting purposes. Based on information from the U.S. Census Bureau, CBO estimates that about 11,000 federal employees currently commute via bicycle. Assuming the appropriation of the necessary amounts, CBO estimates that implementing this provision would cost the federal government $2 million in 2008 and about $30 million over the 2008–2017 period.

Additionally, H.R. 2776 would require two reports by the National Academy of Sciences. One report would evaluate tax provisions in the Internal Revenue Code of 1986 that affect carbon and greenhouse gas emissions, while the other report would concern biofuels, including their present status and future potential. Based on the cost of similar studies and assuming the appropriation of the specified and necessary amounts, CBO estimates that these studies would cost $2 million in 2008 and $3 million over the 2008–2009 period.

Intergovernmental and private-sector impact: JCT has reviewed the tax provisions of H.R. 2776 and has determined that they contain two private-sector mandates as defined in UMRA: the denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof; and the clarification of determination of foreign oil and gas extraction income. The costs required to comply with each federal private-sector mandate generally are no greater than the aggregate estimate budget effects of the provision. The aggregate direct costs of the private-sector mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in each year beginning in fiscal year 2008.

JCT has also determined that the tax provisions of the bill contain no intergovernmental mandates. CBO has determined that the non-tax provisions in H.R. 2776 contain no private-sector or intergovernmental mandates as defined in UMRA.

Estimate prepared by: Federal revenues: Emily Schlect; Federal spending: Matthew Pickford; Impact on state, local, and tribal governments: Neil Hood; Impact on the private sector: Amy Petz.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are too small to be calculated within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill contains two unfunded Federal mandates on the private sector: (1) The denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof; and (2) The clarification of determination of foreign oil and gas extraction income.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

G. Limited Tax Benefits

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule.

H. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

SUBPART A. NONREFUNDABLE PERSONAL CREDITS.

* * * * * * *

[SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CERTAIN BONDS.]

SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

SUBPART I. QUALIFIED TAX CREDIT BONDS.

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 23. ADOPTION EXPENSES.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(4) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section *and section 25D*) and section 27 for the taxable year.

* * * * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(3) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section and sections 23 [and 25B]*, 25B, 25D, and 30D*) and section 27 for the taxable year.

* * * * * * *

SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

(a) * * *

* * * * * * *

(e) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) CARRYFORWARD OF UNUSED CREDIT.—

(A) * * *

* * * * * * *

(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term "applicable tax limit" means—

(i) * * *

(ii) in the case of a taxable year to which section 26(a)(2) does not apply, the limitation imposed by section 26(a)(1) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, 25D, *30D,* and 1400C).

* * * * * * *

SEC. 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.

(a) * * *

* * * * * * *

(g) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under this subpart (other than this section and [section 23] *sections 23, 25D, and 30D*) and section 27 for the taxable year.

* * * * * * *

SEC. 25C. NONBUSINESS ENERGY PROPERTY.

(a) * * *

* * * * * * *

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

(1) APPLICATION OF RULES.—Rules similar to the rules under paragraphs (4), (5), (6), (7), [(8), and (9)] *and (8) (and paragraph (4) as in effect before its repeal by the Renewable Energy and Energy Conservation Tax Act of 2007)* of section 25D(e) shall apply.

* * * * * * *

SEC. 25D. RESIDENTIAL ENERGY EFFICIENT PROPERTY.

(a) * * *

[(b) LIMITATIONS.—

[(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed—

[(A) $2,000 with respect to any qualified solar electric property expenditures,

[(B) $2,000 with respect to any qualified solar water heating property expenditures, and

[(C) $500 with respect to each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made.

[(2) CERTIFICATION OF SOLAR WATER HEATING PROPERTY.—No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

[(c) CARRYFORWARD OF UNUSED CREDIT.—

[(1) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

[(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.]

(b) CERTIFICATION OF SOLAR WATER HEATING PROPERTY.—No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(2) CARRYFORWARD OF UNUSED CREDIT.—

(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess

shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

* * * * * * *

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

(1) * * *

* * * * * * *

[(4) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:

[(A) MAXIMUM EXPENDITURES.—The maximum amount of expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be—

[(i) $6,667 in the case of any qualified solar electric property expenditures,

[(ii) $6,667 in the case of any qualified solar water heating property expenditures, and

[(iii) $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made.

[(B) ALLOCATION OF EXPENDITURES.—The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

[(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

[(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

[(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

[(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

[(C) Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d).]

[(5)] *(4)* TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

[(6)] *(5)* CONDOMINIUMS.—

(A) * * *

* * * * * * *

[(7)] *(6)* ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

[(8)] *(7)* WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

(A) * * *

* * * * * * *

[(9)] *(8)* PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

* * * * * * *

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The aggregate amount of credits allowed by this subpart (other than sections 23, 24, [and 25B] *25B, 25D, and 30D*) for the taxable year shall not exceed the excess (if any) of—

(A) * * *

* * * * * * *

Subpart B—Other Credits

Sec. 27. Taxes of foreign countries and possessions of the United States; possession tax credit.

* * * * * * *

Sec. 30D. Plug-in hybrid vehicles.

* * * * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) * * *

* * * * * * *

(d) NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—

(1) * * *

* * * * * * *

(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

(A) * * *

* * * * * * *

(D) EXCLUSION OF PLUG-IN VEHICLES.—Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.

* * * * * * *

(g) APPLICATION WITH OTHER CREDITS.—

(1) * * *

[(2) PERSONAL CREDIT.—The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

[(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and sections 27 and 30, over

[(B) the tentative minimum tax for the taxable year.]

(2) PERSONAL CREDIT.—The credit allowed under subsection (a) for any taxable year (after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

* * * * * * *

SEC. 30C. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to [30] *50* percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

(b) LIMITATION.—The credit allowed under subsection (a) with respect to any alternative fuel vehicle refueling property shall not exceed—

(1) [$30,000] *$50,000* in the case of a property of a character subject to an allowance for depreciation, and

* * * * * * *

(d) APPLICATION WITH OTHER CREDITS.—

(1) * * *

(2) PERSONAL CREDIT.—The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and [sections 27, 30, and 30B] *sections 27 and 30*, over

* * * * * * *

(g) TERMINATION.—This section shall not apply to any property placed in service—

(1) * * *

(2) in the case of any other property, after December 31, [2009] *2010*.

* * * * * * *

SEC. 30D. PLUG-IN HYBRID VEHICLES.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each qualified plug-in hybrid vehicle placed in service by the taxpayer during the taxable year.

(b) PER VEHICLE DOLLAR LIMITATION.—

(1) IN GENERAL.—The amount determined under this subsection with respect to any qualified plug-in hybrid vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

(2) BASE AMOUNT.—The amount determined under this paragraph is $4,000.

(3) BATTERY CAPACITY.—In the case of vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $200, plus $200 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $2,000.

(c) APPLICATION WITH OTHER CREDITS.—

(1) BUSINESS CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) PERSONAL CREDIT.—

(A) IN GENERAL.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(B) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(ii) the sum of the credits allowable under subpart A (other than this section and sections 23 and 25D) and section 27 for the taxable year.

(d) QUALIFIED PLUG-IN HYBRID VEHICLE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified plug-in hybrid vehicle" means a motor vehicle (as defined in section 30(c)(2))—

(A) the original use of which commences with the taxpayer,

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

(C) which is made by a manufacturer,

(D) which has a gross vehicle weight rating of less than 14,000 pounds,

(E) which has received a certificate of conformity under the Clean Air Act and meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity, and

(G) which either—

(i) is also propelled to a significant extent by other than an electric motor, or

(ii) has a significant onboard source of electricity which also recharges the battery referred to in subparagraph (F).

(2) EXCEPTION.—The term "qualified plug-in hybrid vehicle" shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

(3) OTHER TERMS.—The terms "passenger automobile", "light truck", and "manufacturer" have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) BATTERY CAPACITY.—The term "capacity" means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) LIMITATION ON NUMBER OF QUALIFIED PLUG-IN HYBRID VEHICLES ELIGIBLE FOR CREDIT.—

(1) IN GENERAL.—In the case of a qualified plug-in hybrid vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified plug-in hybrid vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after the date of the enactment of this section, is at least 60,000.

(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) CONTROLLED GROUPS.—Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

(f) SPECIAL RULES.—

(1) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (c)).

(2) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(3) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

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

(5) PROPERTY USED BY TAX-EXEMPT ENTITY; INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Rules similar to the rules of paragraphs (6) and (10) of section 30B(h) shall apply for purposes of this section.

Subpart D—Business Related Credits

* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

(b) CURRENT YEAR BUSINESS CREDIT.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) * * *

* * * * * * *

(8) the renewable electricity production credit under section 45(a), [and]

* * * * * * *

(24) the energy efficient appliance credit determined under section 45M(a), [and]

* * * * * * *

(30) the Hurricane Wilma employee retention credit determined under section 1400R(c), [plus]

(31) the mine rescue team training credit determined under section 45N(a)[.], *plus*

(32) the portion of the plug-in hybrid vehicle credit to which section 30D(c)(1) applies.

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

* * * * * * *

(3) SPECIAL RULES FOR NEW YORK LIBERTY ZONE BUSINESS EMPLOYEE CREDIT.—

(A) * * *

(B) NEW YORK LIBERTY ZONE BUSINESS EMPLOYEE CREDIT.—For purposes of this subsection, the term "New York Liberty Zone business employee credit" means the portion of work opportunity credit under section 51 determined under section [1400L(a)] *1400K(a)*.

(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

(A) * * *

(B) SPECIFIED CREDITS.—For purposes of this subsection, the term "specified credits" means—

(i) * * *

* * * * * * *

(iii) the credit determined under section 45B, [and]

(iv) the credit determined under section 51[.], *and*

(v) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48.

* * * * * * *

SEC. 40. ALCOHOL USED AS FUEL.

(a) GENERAL RULE.—For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit, [plus]

(2) the alcohol credit, [plus]

(3) in the case of an eligible small ethanol producer, the small ethanol producer credit[.], *plus*

(4) in the case of a cellulosic alcohol fuel producer, the cellulosic alcohol fuel producer credit.

* * * * * * *

(b) DEFINITION OF ALCOHOL MIXTURE CREDIT, ALCOHOL CREDIT, AND SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section, and except as provided in subsection (h)—

(1) * * *

* * * * * * *

(5) CELLULOSIC ALCOHOL FUEL PRODUCER CREDIT.—

(A) IN GENERAL.—The cellulosic alcohol fuel producer credit of any cellulosic alcohol fuel producer for any taxable year is 50 cents for each gallon of qualified cellulosic fuel production of such producer.

(B) QUALIFIED CELLULOSIC FUEL PRODUCTION.—For purposes of this paragraph, the term "qualified cellulosic fuel production" means any cellulosic alcohol which is produced by a cellulosic alcohol fuel producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such alcohol at retail to another person and places such alcohol in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) CELLULOSIC ALCOHOL.—For purposes of this paragraph, the term "cellulosic alcohol" means any alcohol which—

(i) is produced in the United States for use as a fuel in the United States, and

(ii) is derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

For purposes of this subparagraph, the term "United States" includes any possession of the United States.

(D) CELLULOSIC ALCOHOL FUEL PRODUCER.—For purposes of this paragraph, the term "cellulosic alcohol fuel producer" means any person who produces cellulosic alcohol in a trade or business and is registered with the Secretary as a cellulosic alcohol fuel producer.

(E) ADDITIONAL DISTILLATION EXCLUDED.—The qualified cellulosic fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

[(5)] *(6)* ADDING OF DENATURANTS NOT TREATED AS MIXTURE.—The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(3) MIXTURE OR ALCOHOL NOT USED AS A FUEL, ETC.—

(A) * * *

* * * * * * *

(C) PRODUCER CREDIT.—If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in [subsection (b)(4)(B)] *paragraph (4)(B) or (5)(B) of subsection (b)*,

* * * * * * *

(6) LIMITATION TO ALCOHOL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term "United States" includes any possession of the United States.

* * * * * * *

SEC. 40A. BIODIESEL AND RENEWABLE DIESEL USED AS FUEL.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel unless—

(A) such biodiesel is produced in the United States for use as a fuel in the United States, and

(B) the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the location of such production.

For purposes of this paragraph, the term "United States" includes any possession of the United States.

* * * * * * *

(f) RENEWABLE DIESEL.—For purposes of this title—

(1) * * *

* * * * * * *

(3) RENEWABLE DIESEL DEFINED.—The term "renewable diesel" means diesel fuel derived from biomass [(as defined in section 45K(c)(3)) using a thermal depolymerization process] which meets—

(A) * * *

(B) the requirements of the American Society of Testing and Materials D975 [or D396] *or other equivalent standard approved by the Secretary for fuels to be used in diesel-powered highway vehicles*.

Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term "biomass" has the meaning given such term by section 45K(c)(3).

(g) TERMINATION.—This section shall not apply to any sale or use after December 31, [2008] *2010*.

* * * * * * *

SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES, ETC.

(a) * * *

(b) LIMITATIONS AND ADJUSTMENTS.—

[(1) PHASEOUT OF CREDIT.—The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

[(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

[(B) 3 cents.]

(1) LIMITATION BASED ON INVESTMENT IN FACILITY.—

(A) IN GENERAL.—In the case of any qualified facility originally placed in service after December 31, 2008, the amount of the credit determined under subsection (a) for any taxable year with respect to electricity produced at such facility shall not exceed the product of—

(i) the applicable percentage with respect to such facility, multiplied by

(ii) the eligible basis of such facility.

(B) CARRYFORWARD OF UNUSED LIMITATION AND EXCESS CREDIT.—

(i) UNUSED LIMITATION.—If the limitation imposed under subparagraph (A) with respect to any facility for any taxable year exceeds the credit determined under subsection (a) (determined without regard to this paragraph) with respect to such facility for such taxable year, the limitation imposed under subparagraph (A) with respect to such facility for the succeeding taxable year shall be increased by the amount of such excess.

(ii) EXCESS CREDIT.—If the credit determined under subsection (a) (determined without regard to this paragraph) with respect to any facility for any taxable year exceeds the limitation imposed under subparagraph (A) with respect to such facility for such taxable year, the credit determined under subsection (a) with respect to such facility for the succeeding taxable year (determined before the application of subparagraph (A) for such succeeding taxable year) shall be increased by the amount of such excess. With respect to any facility, no amount may carried forward under this clause to any taxable year beginning after the 10-year period described in subsection (a)(2)(A)(ii) with respect to such facility.

(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph—

(i) IN GENERAL.—The term "applicable percentage" means, with respect to any facility, the appropriate percentage prescribed by the Secretary for the month in which such facility is originally placed in service.

(ii) METHOD OF PRESCRIBING PERCENTAGES.—The percentages prescribed by the Secretary for any month under clause (i) shall be percentages which yield over a 10-year period amounts of limitation under subparagraph (A) which have a present value equal to 35 percent of the eligible basis of the facility.

(iii) METHOD OF DISCOUNTING.—The present value under clause (ii) shall be determined—

(I) as of the last day of the 1st year of the 10-year period referred to in clause (ii),

(II) by using a discount rate equal to the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month preceding the month for which the percentage is being prescribed, and

(III) by taking into account the limitation under subparagraph (A) for any year on the last day of such year.

(D) ELIGIBLE BASIS.—For purposes of this paragraph, the term "eligible basis" means, with respect to any facility, the basis of such facility determined as of the time that such facility is originally placed in service.

(E) SPECIAL RULE FOR FIRST AND LAST YEAR OF CREDIT PERIOD.—In the case of any taxable year any portion of which is not within the 10-year period described in subsection (a)(2)(A)(ii) with respect to any facility, the amount of the limitation under subparagraph (A) with respect to such facility shall be reduced by an amount which bears the same ratio to the amount of such limitation (determined without regard to this subparagraph) as such portion of the taxable year which is not within such period bears to the entire taxable year.

(2) CREDIT AND PHASEOUT ADJUSTMENT BASED ON INFLATION.—The 1.5 cent amount in subsection (a), [the 8 cent amount in paragraph (1),] the $4.375 amount in subsection

(e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

* * * * * * *

(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

(A) CREDIT RATE.—In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), [or (9)] *(9), or (11)* of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

* * * * * * *

(c) RESOURCES.—For purposes of this section:

(1) IN GENERAL.—The term "qualified energy resources" means—

(A) * * *

* * * * * * *

(G) municipal solid waste, [and]

(H) qualified hydropower production[.], *and*

(I) marine and hydrokinetic renewable energy.

* * * * * * *

(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

(A) IN GENERAL.—The term "marine and hydrokinetic renewable energy" means energy derived from—

(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

(ii) free flowing water in rivers, lakes, and streams,

(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

(iv) differentials in ocean temperature (ocean thermal energy conversion).

(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.

(d) QUALIFIED FACILITIES.—For purposes of this section:

(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, [2009] *2013*.

(2) CLOSED-LOOP BIOMASS FACILITY.—

(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term "qualified facility" means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, [2009] *2013*, or

(ii) owned by the taxpayer which before January 1, [2009] *2013*, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

(3) OPEN-LOOP BIOMASS FACILITIES.—

(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which—

(i) in the case of a facility using agricultural livestock waste nutrients—

(I) is originally placed in service after the date of the enactment of this subclause and before January 1, [2009] *2013*, and

* * * * * * *

(ii) in the case of any other facility, is originally placed in service before January 1, [2009] *2013*.

* * * * * * *

(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, [2009] *2013* (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before [January 1, 2009] *the date of the enactment of paragraph (11)*.

(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, [2009] *2013*.

(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, [2009]

2013. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

* * * * * * *

(9) QUALIFIED HYDROPOWER FACILITY.—In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term "qualified facility" means—

(A) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, [2009] *2013*, and

(B) any other facility placed in service after the date of the enactment of this paragraph and before January 1, [2009] *2013*.

* * * * * * *

(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2013.

* * * * * * *

SEC. 45M. ENERGY EFFICIENT APPLIANCE CREDIT.

(a) * * *

[(b) APPLICABLE AMOUNT.—

[(1) IN GENERAL.—For purposes of subsection (a)—

[(A) DISHWASHERS.—The applicable amount is the energy savings amount in the case of a dishwasher which—

[(i) is manufactured in calendar year 2006 or 2007, and

[(ii) meets the requirements of the Energy Star program which are in effect for dishwashers in 2007.

[(B) CLOTHES WASHERS.—The applicable amount is $100 in the case of a clothes washer which—

[(i) is manufactured in calendar year 2006 or 2007, and

[(ii) meets the requirements of the Energy Star program which are in effect for clothes washers in 2007.

[(C) REFRIGERATORS.—

[(i) 15 PERCENT SAVINGS.—The applicable amount is $75 in the case of a refrigerator which—

[(I) is manufactured in calendar year 2006, and

[(II) consumes at least 15 percent but not more than 20 percent less kilowatt hours per year than the 2001 energy conservation standards.

[(ii) 20 PERCENT SAVINGS.—The applicable amount is $125 in the case of a refrigerator which—

[(I) is manufactured in calendar year 2006 or 2007, and

[(II) consumes at least 20 percent but not more than 25 percent less kilowatt hours per year than the 2001 energy conservation standards.

[(iii) 25 PERCENT SAVINGS.—The applicable amount is $175 in the case of a refrigerator which—

[(I) is manufactured in calendar year 2006 or 2007, and

[(II) consumes at least 25 percent less kilowatt hours per year than the 2001 energy conservation standards.

[(2) ENERGY SAVINGS AMOUNT.—For purposes of paragraph (1)(A)—

[(A) IN GENERAL.—The energy savings amount is the lesser of—

[(i) the product of—

[(I) $3, and

[(II) 100 multiplied by the energy savings percentage, or

[(ii) $100.

[(B) ENERGY SAVINGS PERCENTAGE.—For purposes of subparagraph (A), the energy savings percentage is the ratio of—

[(i) the EF required by the Energy Star program for dishwashers in 2007 minus the EF required by the Energy Star program for dishwashers in 2005, to

[(ii) the EF required by the Energy Star program for dishwashers in 2007.]

(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

(1) DISHWASHERS.—The applicable amount is—

(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

(2) CLOTHES WASHERS.—The applicable amount is—

(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009 or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

(3) REFRIGERATORS.—The applicable amount is—

(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009 or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009 or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.

(4) DEHUMIDIFIERS.—The applicable amount is—

(A) $15 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity less than or equal to 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012, and

(B) $25 in the case of a dehumidifier manufactured in calendar year 2008 that has a capacity greater than 45 pints per day and is 7.5 percent more efficient than the applicable Department of Energy energy conservation standard effective October 2012.

(c) ELIGIBLE PRODUCTION.—

[(1) IN GENERAL.—Except as provided in paragraphs (2), the eligible] *The eligible* production in a calendar year with respect to each type of energy efficient appliance is the excess of—

[(A)] *(1)* the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

[(B)] *(2)* the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding [3-calendar] *2-calendar* year period.

[(2) SPECIAL RULE FOR REFRIGERATORS.—The eligible production in a calendar year with respect to each type of refrigerator described in subsection (b)(1)(C) is the excess of—

[(A) the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

[(B) 110 percent of the average number of appliances of such type which were produced by the taxpayer (or any

predecessor) in the United States during the preceding 3-calendar year period.

[(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

[(1) dishwashers described in subsection (b)(1)(A),

[(2) clothes washers described in subsection (b)(1)(B),

[(3) refrigerators described in subsection (b)(1)(C)(i),

[(4) refrigerators described in subsection (b)(1)(C)(ii), and

[(5) refrigerators described in subsection (b)(1)(C)(iii).]

(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

(1) dishwashers described in subsection (b)(1),

(2) clothes washers described in subsection (b)(2),

(3) refrigerators described in subsection (b)(3), and

(4) dehumidifiers described in subsection (b)(4).

(e) LIMITATIONS.—

[(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years.

[(2) AMOUNT ALLOWED FOR 15 PERCENT SAVINGS REFRIGERATORS.—In the case of refrigerators described in subsection (b)(1)(C)(i), the aggregate amount of the credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $20,000,000.]

(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.

(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

[(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term "qualified energy efficient appliance" means—

[(A) any dishwasher described in subsection (b)(1)(A),

[(B) any clothes washer described in subsection (b)(1)(B), and

[(C) any refrigerator described in subsection (b)(1)(C).]

(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term "qualified energy efficient appliance" means—

(A) any dishwasher described in subsection (b)(1),

(B) any clothes washer described in subsection (b)(2),

(C) any refrigerator described in subsection (b)(3), and

(D) any dehumidifier described in subsection (b)(4).

* * * * * * *

(3) CLOTHES WASHER.—The term "clothes washer" means a residential model clothes washer, including a *commercial* residential style coin operated washer.

(4) TOP-LOADING CLOTHES WASHER.—The term "top-loading clothes washer" means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.

[(4)**]** *(5)* REFRIGERATOR.—The term "refrigerator" means a residential model automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

(6) DEHUMIDIFIER.—The term "dehumidifier" means a self-contained, electrically operated, and mechanically refrigerated encased assembly consisting of—

(A) a refrigerated surface that condenses moisture from the atmosphere,

(B) a refrigerating system, including an electric motor,

(C) an air-circulating fan, and

(D) means for collecting or disposing of condensate.

[(5) EF.—The term "EF" means the energy factor established by the Department of Energy for compliance with the Federal energy conservation standards.**]**

(7) MODIFIED ENERGY FACTOR.—The term "modified energy factor" means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

[(6)**]** *(8)* PRODUCED.—The term "produced" includes manufactured.

[(7)**]** *(9)* 2001 ENERGY CONSERVATION STANDARD.—The term "2001 energy conservation standard" means the energy conservation standards promulgated by the Department of Energy and effective July 1, 2001.

(10) GALLONS PER CYCLE.—The term "gallons per cycle" means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

(11) WATER CONSUMPTION FACTOR.—The term "water consumption factor" means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

* * * * * * *

Subpart E—Rules for Computing Investment Credit

* * * * * * *

SEC. 48. ENERGY CREDIT.

(a) ENERGY CREDIT.—

(1) * * *

(2) ENERGY PERCENTAGE.—

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

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, [2009] *2017*, and

* * * * * * *

(3) ENERGY PROPERTY.—For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) * * *

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, [2009] *2017*,

* * * * * * *

[The term "energy property" shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).] Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

* * * * * * *

(c) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

(1) QUALIFIED FUEL CELL PROPERTY.—

(A) * * *

(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under [paragraph (1)] *subsection (a)* for such year with respect to such property shall not exceed an amount equal to [$500] *$1,500* for each 0.5 kilowatt of capacity of such property.

* * * * * * *

[(D) SPECIAL RULE.—The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified fuel cell property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).]

[(E)] *(D)* TERMINATION.—The term "qualified fuel cell property" shall not include any property for any period after December 31, [2008] *2016*.

(2) QUALIFIED MICROTURBINE PROPERTY.—

(A) * * *

(B) LIMITATION.—In the case of qualified microturbine property placed in service during the taxable year, the credit otherwise determined under [paragraph (1)] *subsection (a)* for such year with respect to such property shall not exceed an amount equal $200 for each kilowatt of capacity of such property.

* * * * * * *

[(D) SPECIAL RULE.—The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).]

[(E)] *(D)* TERMINATION.—The term "qualified microturbine property" shall not include any property for any period after December 31, 2008.

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Subpart H—Nonrefundable Credit to Holders of [Certain Bonds] *Clean Renewable Energy Bonds*

* * * * * * *

SEC. 54. CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS.

(a) * * *

* * * * * * *

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under this part (other than [subpart C] *subparts C and I*, section 1400N(l), and this section).

* * * * * * *

Subpart I—Qualified Tax Credit Bonds

Sec. 54A. Credit to holders of qualified tax credit bonds.
Sec. 54B. New clean renewable energy bonds.
Sec. 54C. Qualified energy conservation bonds.
Sec. 54D. Qualified residential energy efficiency assistance bonds.

SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.

(a) ALLOWANCE OF CREDIT.—If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified tax credit bond is the product of—

(A) the applicable credit rate, multiplied by

(B) the outstanding face amount of the bond.

(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds

with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) QUALIFIED TAX CREDIT BOND.—For purposes of this section—

(1) QUALIFIED TAX CREDIT BOND.—The term "qualified tax credit bond" means—

(A) a new clean renewable energy bond,

(B) a qualified energy conservation bond, or

(C) a qualified residential energy efficiency assistance bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), and (5).

(2) SPECIAL RULES RELATING TO EXPENDITURES.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of

such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) EXPENDITURE PERIOD.—For purposes of this subpart, the term "expenditure period" means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term "qualified purpose" means—

(i) in the case of a new clean renewable energy bond, a purpose specified in section 54B(a)(1),

(ii) in the case of a qualified energy conservation bond, a purpose specified in section 54C(a)(1), and

(iii) in the case of a qualified residential energy efficiency assistance bond, a purpose specified in section 54D(a)(1).

(D) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) REPORTING.—An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) SPECIAL RULES RELATING TO ARBITRAGE.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) SPECIAL RULE FOR RESERVE FUNDS.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner that such fund will not exceed the amount necessary to repay the issue if invested at the maximum rate permitted under clause (iii), and

(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) MATURITY LIMITATION.—

(A) IN GENERAL.—An issue shall not be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue exceeds the maximum term determined by the Secretary under subparagraph (B).

(B) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST.—An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) OTHER DEFINITIONS.—For purposes of this subchapter—

(1) CREDIT ALLOWANCE DATE.—The term "credit allowance date" means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(2) BOND.—The term "bond" includes any obligation.

(3) STATE.—The term "State" includes the District of Columbia and any possession of the United States.

(4) AVAILABLE PROJECT PROCEEDS.—The term "available project proceeds" means—

(A) the excess of—

(i) the proceeds from the sale of an issue, over

(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) CREDIT TREATED AS INTEREST.—For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S CORPORATIONS AND PARTNERSHIPS.—In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

(h) BONDS HELD BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.

(i) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

SEC. 54B. NEW CLEAN RENEWABLE ENERGY BONDS.

(a) NEW CLEAN RENEWABLE ENERGY BOND.—For purposes of this subpart, the term "new clean renewable energy bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by public power providers or cooperative electric companies for one or more qualified renewable energy facilities,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) REDUCED CREDIT AMOUNT.—The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

(1) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

(2) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national new clean renewable energy bond limitation of $2,000,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

(A) not more than 60 percent thereof may be allocated to qualified projects of public power providers, and

(B) not more than 40 percent thereof may be allocated to qualified projects of cooperative electric companies.

(3) METHOD OF ALLOCATION.—

(A) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under subparagraph (2)(A) bears to the cost of all such projects.

(B) ALLOCATION AMONG COOPERATIVE ELECTRIC COMPANIES.—The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraph (2)(B) among qualified projects of cooperative electric companies in such manner as the Secretary determines appropriate.

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

(1) QUALIFIED RENEWABLE ENERGY FACILITY.—The term "qualified renewable energy facility" means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider or a cooperative electric company.

(2) PUBLIC POWER PROVIDER.—The term "public power provider" means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

(3) COOPERATIVE ELECTRIC COMPANY.—The term "cooperative electric company" means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

(4) CLEAN RENEWABLE ENERGY BOND LENDER.—The term "clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(5) QUALIFIED ISSUER.—The term "qualified issuer" means a public power provider, a cooperative electric company, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

SEC. 54C. QUALIFIED ENERGY CONSERVATION BONDS.

(a) QUALIFIED ENERGY CONSERVATION BOND.—For purposes of this subchapter, the term "qualified energy conservation bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

(2) the bond is issued by a State or local government, and

(3) the issuer designates such bond for purposes of this section.

(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $3,600,000,000.

(d) ALLOCATIONS.—

(1) IN GENERAL.—The limitation applicable under subsection (c) shall be allocated by the Secretary among the States in proportion to the population of the States.

(2) ALLOCATIONS TO LARGEST LOCAL GOVERNMENTS.—

(A) IN GENERAL.—In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

(B) ALLOCATION OF UNUSED LIMITATION TO STATE.—The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

(C) LARGE LOCAL GOVERNMENT.—For purposes of this section, the term "large local government" means any municipality or county if such municipality or county has a population of 100,000 or more.

(3) ALLOCATION TO ISSUERS; RESTRICTION ON PRIVATE ACTIVITY BONDS.—Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

(e) QUALIFIED CONSERVATION PURPOSE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified conservation purpose" means any of the following:

(A) Capital expenditures incurred for purposes of—

(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

(ii) implementing green community programs, or

(iii) rural development involving the production of electricity from renewable energy resources.

(B) Expenditures with respect to research facilities, and research grants, to support research in—

(i) development of cellulosic ethanol or other nonfossil fuels,

(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of—

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

(2) SPECIAL RULES FOR PRIVATE ACTIVITY BONDS.—For purposes of this section, in the case of any private activity bond, the term "qualified conservation purposes" shall not include any expenditure which is not a capital expenditure.

(f) POPULATION.—

(1) IN GENERAL.—The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(2) SPECIAL RULE FOR COUNTIES.—In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

(g) APPLICATION TO INDIAN TRIBAL GOVERNMENTS.—An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

(1) an Indian tribal government shall be treated for purposes of subsection (d) as located within a State to the extent of so much of the population of such government as resides within such State, and

(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.

SEC. 54D. QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE BONDS.

(a) QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE BOND.—For purposes of this subchapter, the term "qualified residential energy efficiency assistance bond" means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for 1 or more qualified residential energy efficiency assistance purposes,

(2) not less than 20 percent of the available project proceeds of such issue are to be used for 1 or more qualified low-income residential energy efficiency assistance purposes,

(3) repayments of principal and applicable interest on financing provided by the issue are used not later than the close of the 3-month period beginning on the date the prepayment (or complete repayment) is received to redeem bonds which are part of the issue or to provide for 1 or more qualified residential energy efficiency assistance purposes,

(4) the bond is issued by a State, and

(5) the issuer designates such bond for purposes of this section.

(b) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) to such issuer.

(c) NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.—There is a national qualified energy conservation bond limitation of $2,400,000,000.

(d) LIMITATION ALLOCATED AMONG STATES.—The limitation under subsection (c) shall be allocated by the Secretary among the States in proportion to the population of the States.

(e) QUALIFIED RESIDENTIAL ENERGY EFFICIENCY ASSISTANCE PURPOSE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified residential energy efficiency assistance purpose" means any grant or low-interest loan to acquire (including reasonable installation costs)—

(A) any property which meets (at a minimum) the requirements of the Energy Star program and which is to be installed in a dwelling unit,

(B) any property which uses wind, solar, or geothermal energy or qualified fuel cell property (as defined in section 48(c)(1)) to generate electricity, or to heat or cool water, for use in a dwelling unit (other than property described in section 25D(e)(3)), and

(C) any improvements to a dwelling unit which are made pursuant to a plan certified by an energy efficiency expert that such improvement will yield at least a 20 percent reduction in total household energy consumption related to heating, cooling, lighting, and appliances.

(2) GEOTHERMAL HEAT PUMP.—Any geothermal heat pump to provide heating or cooling in a dwelling unit described in paragraph (1)(B) shall be treated as described in paragraph (1)(B).

(3) DOLLAR LIMITATIONS.—

(A) IN GENERAL.—Such term shall not include any grant or loan for improvements described in paragraph (1)(C)

with respect to any dwelling unit to the extent that such grant or loan (when added to all other grants or loans for such improvements) exceeds $5,000.

(B) INCREASED LIMITATION FOR CERTAIN PRINCIPAL RESIDENCES.—In the case of a dwelling unit which is used as a principal residence (within the meaning of section 121) by the recipient of the grant or loan referred to in subparagraph (A)—

(i) subparagraph (A) shall be applied by substituting "$12,000" for "$5,000" if such grant or loan would satisfy the requirements of paragraph (1)(A) if such paragraph were applied by substituting "50 percent" for "20 percent", and

(ii) in any case to which clause (i) does not apply, subparagraph (A) shall be applied by substituting "$8,000" for "$5,000" if such grant or loan would satisfy the requirements of paragraph (1)(A) if such paragraph were applied by substituting "35 percent" for "20 percent".

(4) LOW-INTEREST LOAN.—The term "low interest loan" means any loan which charges interest at a rate which does not exceed the applicable Federal rate in effect under section 1288(b)(1) determined as of the issuance of the loan.

(5) EXCLUSION OF CERTAIN PROPERTY.—The following property shall not be taken into account for purposes of paragraph (1)(A):

(A) Any equipment used in connection with a swimming pool, hot tub, or similar property.

(B) Any television.

(C) Any device for converting digital signal to analog.

(D) Any DVD player.

(E) Any video cassette recorder (VCR).

(F) Any audio equipment.

(G) Any cordless phone.

(H) Any other item of property where there is substantial recreational use.

(f) QUALIFIED LOW-INCOME RESIDENTIAL EFFICIENCY ASSISTANCE PURPOSE.—For purposes of this section—

(1) IN GENERAL.—The term "qualified low-income residential energy efficiency assistance purpose" means any qualified residential energy efficiency assistance purpose with respect to a dwelling unit which is occupied (at the time of the grant or loan) by individuals whose income is 50 percent or less of area median gross income. Rules similar to the rules of section 142(d)(2)(B) shall apply for purposes of this paragraph.

(2) RESTRICTION TO GRANTS.—Such term shall not include any loan.

(g) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE INTEREST.—The term "applicable interest" means, with respect to any loan, so much of any interest on such loan which exceeds 1 percentage point.

(2) SPECIAL RULE RELATING TO ARBITRAGE.—An issue shall not be treated as failing to meet the requirements of section 54A(d)(4)(A) by reason of any investment of available project

proceeds in 1 or more qualified residential energy efficiency assistance purposes.

(3) POPULATION.—The population of any State or local government shall be determined as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(4) REPORTING.—

(A) REPORTS BY ISSUERS.—Issuers of qualified residential energy efficiency assistance bonds shall, not later than 6 months after the expenditure period (as defined in section 54A) and annually thereafter until the last such bond is redeemed, submit reports to the Secretary regarding such bonds, including information regarding—

(i) the number and monetary value of loans and grants provided and the purposes for which provided,

(ii) the number of dwelling units the energy efficiency of which improved as result of such loans and grants,

(iii) the types of property described in subsection (e)(1)(A) installed as a result of such loans and grants and the projected energy savings with respect to such property,

(iv) the types of property described in subsection (e)(1)(B) installed as a result of such loans and grants and the projected production of such property, and

(v) the projected energy savings as a result of such loans and grants for improvements described in subsection (e)(1)(C).

(B) REPORT TO CONGRESS.—Not later than 12 months after receipt of the first report under subparagraph (A) and annually thereafter until the last such report is required to be submitted, the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit a report to Congress regarding the bond program under this section, including information regarding—

(i) the aggregate of each category of information described in subparagraph (A) (including any independent assessment of projected energy savings), and

(ii) an estimate of the amount of greenhouse gas emissions reduced as a result of such bond program.

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Subchapter B—Computation of Taxable Income

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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SEC. 132. CERTAIN FRINGE BENEFITS.

(a) * * *

* * * * * * *

(f) QUALIFIED TRANSPORTATION FRINGE.—

(1) IN GENERAL.—For purposes of this section, the term "qualified transportation fringe" means any of the following provided by an employer to an employee:

(A) * * *

* * * * * * *

(D) Any qualified bicycle commuting reimbursement.

(2) LIMITATION ON EXCLUSION.—The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1), **[**and**]**

(B) $175 per month in the case of qualified parking**[**.**]**, *and*

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

* * * * * * *

(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe *(other than a qualified bicycle commuting reimbursement)* and compensation which would otherwise be includible in gross income of such employee.

(5) DEFINITIONS.—For purposes of this subsection—

(A) * * *

* * * * * * *

(F) DEFINITIONS RELATED TO BICYCLE COMMUTING REIMBURSEMENT.—

(i) QUALIFIED BICYCLE COMMUTING REIMBURSEMENT.—The term "qualified bicycle commuting reimbursement" means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) APPLICABLE ANNUAL LIMITATION.—The term "applicable annual limitation" means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) QUALIFIED BICYCLE COMMUTING MONTH.—The term "qualified bicycle commuting month" means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 167. DEPRECIATION.

(a) * * *

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(h) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

(1) * * *

* * * * * * *

(5) SPECIAL RULE FOR MAJOR INTEGRATED OIL COMPANIES.—

(A) IN GENERAL.—In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting "**[**5-year**]** *7-year*" for "24 month".

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) * * *

* * * * * * *

(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—

(1) * * *

* * * * * * *

(3) CLASSIFICATION OF CERTAIN PROPERTY.—

(A) * * *

(B) 5-YEAR PROPERTY.—The term "5-year property" includes—

(i) * * *

* * * * * * *

(v) any section 1245 property used in connection with research and experimentation, **[**and**]**

(vi) any property which—

(I) * * *

* * * * * * *

(III) is described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)**[**.**]**, *and*

(vii) any qualified energy management device.

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

* * * * * * *

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(18) QUALIFIED ENERGY MANAGEMENT DEVICE.—

(A) IN GENERAL.—The term "qualified energy management device" means any energy management device which is installed on real property of a customer of the taxpayer and is placed in service by a taxpayer who—

(i) is a supplier of electric energy or a provider of electric energy services, and

(ii) provides all commercial and residential customers of such supplier or provider with net metering upon the request of such customer.

(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term "energy management device" means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's energy management device in support of time-based rates or other forms of demand response, and

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically.

(C) NET METERING.—For purposes of subparagraph (A), the term "net metering" means allowing customers a credit for providing electricity to the supplier or provider.

* * * * * * *

(k) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE JANUARY 1, 2005.—

(1) * * *

(2) QUALIFIED PROPERTY.—For purposes of this subsection—

(A) * * *

* * * * * * *

(D) EXCEPTIONS.—

(i) * * *

(ii) QUALIFIED NEW YORK LIBERTY ZONE LEASEHOLD IMPROVEMENT PROPERTY.—The term "qualified property" shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in [section 1400L(c)(2)] *section 1400K(c)(2)*).

* * * * * * *

SEC. 179. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

[(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

[(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

[(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

[(i) IN GENERAL.—The term "sport utility vehicle" means any 4-wheeled vehicle—

[(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

[(II) which is not subject to section 280F, and

[(III) which is rated at not more than 14,000 pounds gross vehicle weight.

[(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

[(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

[(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

[(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.]

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SEC. 179D. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) * * *

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(h) TERMINATION.—This section shall not apply with respect to property placed in service after December 31, [2008] *2013*.

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SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) * * *

* * * * * * *

(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

(1) * * *

* * * * * * *

(4) DOMESTIC PRODUCTION GROSS RECEIPTS.—

(A) IN GENERAL.—The term "domestic production gross receipts" means the gross receipts of the taxpayer which are derived from—

(i) any lease, rental, license, sale, exchange, or other disposition of—

(I) * * *

* * * * * * *

(III) [electricity, natural gas,] *electricity* or potable water produced by the taxpayer in the United States,

* * * * * * *

(B) EXCEPTIONS.—Such term shall not include gross receipts of the taxpayer which are derived from—

(i) * * *

(ii) the transmission or distribution of [electricity, natural gas,] *electricity* or potable water, [or]

(iii) the lease, rental, license, sale, exchange, or other disposition of land[.], *or*

(iv) the sale, exchange, or other disposition of oil, natural gas, or any primary product thereof.

For purposes of clause (iv), the term "primary product" has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

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PART IX—ITEMS NOT DEDUCTIBLE

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SEC. 280F. LIMITATION ON DEPRECIATION FOR LUXURY AUTOMOBILES; LIMITATION WHERE CERTAIN PROPERTY USED FOR PERSONAL PURPOSES.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

[(5) PASSENGER AUTOMOBILE.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term "passenger automobile" means any 4-wheeled vehicle—

[(i) which is manufactured primarily for use on public streets, roads, and highways, and

[(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

In the case of a truck or van, clause (ii) shall be applied by substituting "gross vehicle weight" for "unloaded gross vehicle weight".

[(B) EXCEPTION FOR CERTAIN VEHICLES.—The term "passenger automobile" shall not include—

[(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

[(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

[(iii) under regulations, any truck or van.]

(5) PASSENGER AUTOMOBILE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "passenger automobile" means any 4-wheeled vehicle—

(i) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails), and

(ii) which is rated at not more than 14,000 pounds gross vehicle weight.

(B) EXCEPTIONS.—The term "passenger automobile" shall not include—

(i) any exempt-design vehicle, and

(ii) any exempt-use vehicle.

(C) EXEMPT-DESIGN VEHICLE.—The term "exempt-design vehicle" means—

(i) any vehicle which, by reason of its nature or design, is not likely to be used more than a de minimis amount for personal purposes, and

(ii) any vehicle—

(I) which is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) which is equipped with a cargo area of at least 5 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(D) EXEMPT-USE VEHICLE.—The term "exempt-use vehicle" means—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) any truck or van if substantially all of the use of such vehicle by the taxpayer is directly in—

(I) a farming business (within the meaning of section 263A(e)(4)),

(II) the transportation of a substantial amount of equipment, supplies, or inventory, or

(III) the moving or delivery of property which requires substantial cargo capacity.

(E) RECAPTURE.—In the case of any vehicle which is not a passenger automobile by reason of being an exempt-use vehicle, if such vehicle ceases to be an exempt-use vehicle in any taxable year after the taxable year in which such vehicle is placed in service, a rule similar to the rule of subsection (b) shall apply.

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

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SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) * * *

* * * * * * *

(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

(1) * * *

* * * * * * *

(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term "qualifying electric transmission transaction" means any sale or other disposition [before January 1, 2008,] *before January 1, 2010, by a qualified electric utility,* of—

(A) * * *

* * * * * * *

(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term "independent transmission company" means—

(A) * * *

(B) a person—

(i) * * *

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than [December 31, 2007] *the date which is 4 years after the close of the taxable year in which the transaction occurs*, or

* * * * * * *

(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection:

(A) * * *

* * * * * * *

(C) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The term "exempt utility property" shall not include any property which is located outside the United States.

(6) QUALIFIED ELECTRIC UTILITY.—For purposes of this subsection, the term "qualified electric utility" means—

(A) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))), and

(B) any person in the same holding company system (as defined in section 1262(9) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(9))) as an electric utility referred to subparagraph (A).

[(6)] *(7)* SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

[(7)] *(8)* TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) * * *

* * * * * * *

[(8)] *(9)* PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

[(9)] *(10)* ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

[(10)] *(11)* NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart A—Foreign Tax Credit

* * * * * * *

SEC. 907. SPECIAL RULES IN CASE OF FOREIGN OIL AND GAS INCOME.

(a) * * *

* * * * * * *

(c) FOREIGN INCOME DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) FOREIGN OIL AND GAS EXTRACTION INCOME.—The term "foreign oil and gas extraction income" means the taxable income derived from sources without the United States and its possessions from—

(A) the extraction (by the taxpayer or any other person) of minerals from oil or gas wells, [or]

(B) so much of any transportation of such minerals as occurs before the fair market value event, or

[(B)] *(C)* the sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A) *or used by the taxpayer in the activity described in subparagraph (B).*

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(2) FOREIGN OIL RELATED INCOME.—The term "foreign oil related income" means the taxable income derived from sources outside the United States and its possessions from—

(A) * * *

[(B) the transportation of such minerals or primary products,]

(B) so much of the transportation of such minerals or primary products as is not taken into account under paragraph (1)(B),

* * * * * * *

(6) FAIR MARKET VALUE EVENT.—For purposes of this section, the term "fair market value event" means, with respect to any mineral, the first point in time at which such mineral—

(A) has a fair market value which can be determined on the basis of a transfer, which is an arm's length transaction, of such mineral from the taxpayer to a person who is not related (within the meaning of section 482) to such taxpayer, or

(B) is at a location at which the fair market value is readily ascertainable by reason of transactions among unrelated third parties with respect to the same mineral (taking into account source, location, quality, and chemical composition).

(7) OIL AND GAS TAXES.—In the case of any tax imposed by a foreign country which is limited in its application to taxpayers engaged in oil or gas activities—

(A) the term "oil and gas extraction taxes" shall include such tax,

(B) the term "foreign oil and gas extraction income" shall include any taxable income which is taken into account in determining such tax (or is directly attributable to the activity to which such tax relates), and

(C) the term "foreign oil related income" shall not include any taxable income which is treated as foreign oil and gas extraction income under subparagraph (B).

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Subchapter O—Gain or Loss on Disposition of Property

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PART II—BASIS RULES OF GENERAL APPLICATION

* * * * * * *

SEC. 1016. ADJUSTMENTS TO BASIS.

(a) PROPER ADJUSTMENT IN RESPECT OF THE PROPERTY SHALL IN ALL CASES BE MADE.—

(1) * * *

* * * * * * *

(36) to the extent provided in section 30B(h)(4), [and]

(37) to the extent provided in section 30C(f)[.], *and*

(38) to the extent provided in section 30D(f)(1).

* * * * * * *

Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

* * * * * * *

PART IV—INCENTIVES FOR EDUCATION ZONES

* * * * * * *

SEC. 1397E. CREDIT TO HOLDERS OF QUALIF ZONE ACADEMY BONDS.

(a) * * *

* * * * * * *

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) * * *

(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and [subpart H] *subparts H and I* thereof).

* * * * * * *

Subchapter W—District of Columbia Enterprise Zone

* * * * * * *

SEC. 1400C. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.

(a) * * *

* * * * * * *

(d) CARRYFORWARD OF UNUSED CREDIT.—

(1) * * *

(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, 25B, [and 25D] *25D, and 30D*), such excess shall be carried to the succeeding tax-

able year and added to the credit allowable under subsection (a) for such taxable year.

* * * * * * *

Subchapter Y—Short-Term Regional Benefits

* * * * * * *

PART I—TAX BENEFITS FOR NEW YORK LIBERTY ZONE

Sec. [1400L] *1400K.* Tax benefits for New York Liberty Zone.
Sec. 1400L. New York Liberty Zone tax credits.

* * * * * * *

SEC. [1400L] *1400K.* TAX BENEFITS FOR NEW YORK LIBERTY ZONE.

(a) * * *

(b) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001.—

(1) * * *

(2) QUALIFIED NEW YORK LIBERTY ZONE PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified New York Liberty Zone property" means property—

(i) * * *

* * * * * * *

The term "termination date" means December 31, 2006 [(December 31, 2009, in the case of nonresidential real property and residential rental property)] *(in the case of nonresidential real property and residential rental property, the date of the enactment of the Renewable Energy and Energy Conservation Tax Act of 2007 or, if acquired pursuant to a binding contract in effect on such enactment date, December 31, 2009).*

* * * * * * *

SEC. 1400L. NEW YORK LIBERTY ZONE TAX CREDITS.

(a) IN GENERAL.—In the case of a New York Liberty Zone governmental unit, there shall be allowed as a credit against any taxes imposed for any payroll period by section 3402 for which such governmental unit is liable under section 3403 an amount equal to so much of the portion of the qualifying project expenditure amount allocated under subsection (b)(3) to such governmental unit for the calendar year as is allocated by such governmental unit to such period under subsection (b)(4).

(b) QUALIFYING PROJECT EXPENDITURE AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "qualifying project expenditure amount" means, with respect to any calendar year, the sum of—

(A) the total expenditures paid or incurred during such calendar year by all New York Liberty Zone governmental units and the Port Authority of New York and New Jersey for any portion of qualifying projects located wholly within the City of New York, New York, and

(B) any such expenditures—

(i) paid or incurred in any preceding calendar year which begins after the date of enactment of this section, and

(ii) not previously allocated under paragraph (3).

(2) QUALIFYING PROJECT.—The term "qualifying project" means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone (as defined in section 1400K(h)), which is designated as a qualifying project under this section jointly by the Governor of the State of New York and the Mayor of the City of New York, New York.

(3) GENERAL ALLOCATION.—

(A) IN GENERAL.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly allocate to each New York Liberty Zone governmental unit the portion of the qualifying project expenditure amount which may be taken into account by such governmental unit under subsection (a) for any calendar year in the credit period.

(B) AGGREGATE LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for all calendar years in the credit period shall not exceed $2,000,000,000.

(C) ANNUAL LIMIT.—The aggregate amount which may be allocated under subparagraph (A) for any calendar year in the credit period shall not exceed the sum of—

(i) $169,000,000, plus

(ii) the aggregate amount authorized to be allocated under this paragraph for all preceding calendar years in the credit period which was not so allocated.

(D) UNALLOCATED AMOUNTS AT END OF CREDIT PERIOD.—If, as of the close of the credit period, the amount under subparagraph (B) exceeds the aggregate amount allocated under subparagraph (A) for all calendar years in the credit period, the Governor of the State of New York and the Mayor of the City of New York, New York, may jointly allocate to New York Liberty Zone governmental units for any calendar year in the 5-year period following the credit period an amount equal to—

(i) the lesser of—

(I) such excess, or

(II) the qualifying project expenditure amount for such calendar year, reduced by

(ii) the aggregate amount allocated under this subparagraph for all preceding calendar years.

(4) ALLOCATION TO PAYROLL PERIODS.—Each New York Liberty Zone governmental unit which has been allocated a portion of the qualifying project expenditure amount under paragraph (3) for a calendar year may allocate such portion to payroll periods beginning in such calendar year as such governmental unit determines appropriate.

(c) CARRYOVER OF UNUSED ALLOCATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the amount allocated under subsection (b)(3) to a New York Liberty Zone governmental unit for any calendar year exceeds the ag-

gregate taxes imposed by section 3402 for which such governmental unit is liable under section 3403 for periods beginning in such year, such excess shall be carried to the succeeding calendar year and added to the allocation of such governmental unit for such succeeding calendar year.

(2) REALLOCATION.—If a New York Liberty Zone governmental unit does not use an amount allocated to it under subsection (b)(3) within the time prescribed by the Governor of the State of New York and the Mayor of the City of New York, New York, then such amount shall after such time be treated for purposes of subsection (b)(3) in the same manner as if it had never been allocated.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) CREDIT PERIOD.—The term "credit period" means the 12-year period beginning on January 1, 2008.

(2) NEW YORK LIBERTY ZONE GOVERNMENTAL UNIT.—The term "New York Liberty Zone governmental unit" means—

(A) the State of New York,

(B) the City of New York, New York, and

(C) any agency or instrumentality of such State or City.

(3) TREATMENT OF FUNDS.—Any expenditure for a qualifying project taken into account for purposes of the credit under this section shall be considered State and local funds for the purpose of any Federal program.

(4) TREATMENT OF CREDIT AMOUNTS FOR PURPOSES OF WITHHOLDING TAXES.—For purposes of this title, a New York Liberty Zone governmental unit shall be treated as having paid to the Secretary, on the day on which wages are paid to employees, an amount equal to the amount of the credit allowed to such entity under subsection (a) with respect to such wages, but only if such governmental unit deducts and withholds wages for such payroll period under section 3401 (relating to wage withholding).

(e) REPORTING.—The Governor of the State of New York and the Mayor of the City of New York, New York, shall jointly submit to the Secretary an annual report—

(1) which certifies—

(A) the qualifying project expenditure amount for the calendar year, and

(B) the amount allocated to each New York Liberty Zone governmental unit under subsection (b)(3) for the calendar year, and

(2) includes such other information as the Secretary may require to carry out this section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to ensure compliance with the purposes of this section.

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PART II—TAX BENEFITS FOR GO ZONES

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SEC. 1400N. TAX BENEFITS FOR GULF OPPORTUNITY ZONE.

(a) * * *

* * * * * * *

(l) CREDIT TO HOLDERS OF GULF TAX CREDIT BONDS.—

(1) * * *

* * * * * * *

(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under paragraph (1) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under part IV of subchapter A (other than [subpart C] *subparts C and I* and this subsection).

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart B—Information Concerning Transactions with Other Persons

* * * * * * *

SEC. 6049. RETURNS REGARDING PAYMENTS OF INTEREST.

(a) * * *

* * * * * * *

(d) DEFINITIONS AND SPECIAL RULES.—

For purposes of this section—

(1) * * *

* * * * * * *

(9) REPORTING OF CREDIT ON QUALIFIED TAX CREDIT BONDS.—

(A) IN GENERAL.—For purposes of subsection (a), the term "interest" includes amounts includible in gross income under section 54A and such amounts shall be treated as paid on the credit allowance date (as defined in section 54A(e)(1)).

(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A) of this paragraph, subsection (b)(4) of this section shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i).

(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

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SEC. 6401. AMOUNTS TREATED AS OVERPAYMENTS.

(a) * * *

(b) EXCESSIVE CREDITS.—

(1) IN GENERAL.—If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, G, [and H] *H, and I* of such part IV), the amount of such excess shall be considered an overpayment.

* * * * * * *

Subchapter B—Rules of Special Application

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SEC. 6426. CREDIT FOR ALCOHOL FUEL, BIODIESEL, AND ALTERNATIVE FUEL MIXTURES.

(a) * * *

* * * * * * *

(c) BIODIESEL MIXTURE CREDIT.—

(1) * * *

* * * * * * *

(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, [2008] *2010*.

(d) ALTERNATIVE FUEL CREDIT.—

(1) * * *

(2) ALTERNATIVE FUEL.—For purposes of this section, the term "alternative fuel" means—

(A) * * *

* * * * * * *

(F) liquid [hydrocarbons] *fuel* derived from biomass (as defined in section 45K(c)(3)).

(h) DENIAL OF DOUBLE BENEFIT.—No credit shall be determined under subsection (d) or (e) with respect to any fuel with respect to which credit may be determined under subsection (b) or (c) or under section 40 or 40A.

(i) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—

(1) ALCOHOL.—No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States.

(2) BIODIESEL AND ALTERNATIVE FUELS.—No credit shall be determined under this section with respect to any biodiesel or alternative fuel unless—

(A) such biodiesel or alternative fuel is produced in the United States for use as a fuel in the United States, and

(B) the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of such biodiesel or alternative fuel which identifies the product produced and the location of such production.

For purposes of this subsection, the term "United States" includes any possession of the United States.

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * * * *

(e) ALCOHOL, BIODIESEL, OR ALTERNATIVE FUEL.—Except as provided in subsection (k)—

(1) * * *

* * * * * * *

(5) LIMITATION TO FUELS WITH CONNECTION TO THE UNITED STATES.—No amount shall be payable under paragraph (1) or (2) with respect to any mixture or alternative fuel if credit is not allowed with respect to such mixture or alternative fuel by reason of section 6426(i).

[(5)**]** *(6)* TERMINATION.—This subsection shall not apply with respect to—

(A) * * *

(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after December 31, **[**2008**]** *2010*,

* * * * * * *

CHAPTER 66—LIMITATIONS

* * * * * * *

Subchapter A—Limitations on Assessment and Collection

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) * * *

* * * * * * *

(m) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 30(d)(4), 30B(h)(9), 30C(e)(5), *30D(f)(4),* 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any revocation thereof) shall not expire

before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

* * * * * * *

VI. DISSENTING VIEWS

Through a series of hearings, public statements and other conversations with our friends across the aisle, we mistakenly came to believe that the Majority party was serious about addressing the real and growing energy needs of this country.

Republicans and Democrats agree that the price of gasoline is far too high. We agree that we should reduce our dependence on foreign sources of energy by developing our own vast domestic and renewable energy resources. We believe that climate change is a legitimate concern, and that we must work hard to find a global solution to that problem. With such consensus on these major issues, we were optimistic that we could develop a bipartisan and effective approach to the future of energy policy in the United States.

Unfortunately, the bill approved by the Ways & Means Committee went down a different path. Rather than focus on these important issues, the bill suffers from a lack of imagination in addressing the complex energy problems we face today. For these reasons, we must oppose this bill and will push instead for a better energy policy as the legislative process evolves.

FAILS TO ADDRESS FUNDAMENTAL GOAL OF THE LEGISLATION

As noted at the outset, there continues to be bipartisan consensus on the need to address climate change and on the need to reduce our dependence on foreign sources of energy. Despite this agreement, the Majority's bill does little to address these two issues. Indeed, it may decrease our energy independence.

For example, the bill would allocate $6 billion in tax credit bonds to states and localities to use largely at their whim. The bill has no certification requirement that those expenditures actually be used to reduce greenhouse gases or fossil fuel consumption.

Likewise, the punitive tax increases on domestic oil and gas producers will almost certainly increase our reliance on foreign sources of energy. Furthermore, while higher taxes on oil and gas companies may make for good talking points for politicians complaining about the high price of gasoline, it is difficult to imagine any serious economist would agree that higher taxes will bring down prices. But as was noted during the mark-up, some proponents of the legislation would prefer to raise taxes on oil and gas for the specific purpose of driving up prices to reduce consumption. For those harboring that hidden goal, one that few politicians would be willing to utter, this bill will bring those secret dreams one step closer to reality.

PROBLEMS REQUIRE BROAD-BASED SOLUTIONS

A key component of the bill is the creation of a slush fund, financed with tax credit bonds, that will put federal dollars and few restrictions into the hands of governors, mayors of the 242 biggest

cities in America, and countless other county officials, school boards and other political entities.

During the mark-up, the witnesses before the Committee confirmed that qualifying expenditures for such bonds could include hybrid Lexus police cars for Beverly Hills, hybrid snowmobiles in posh Aspen, solar panels for Al Gore's house and bicycle powered toasters for all. It was thus disappointing to see numerous Republican amendments to responsibly limit the use of these funds reflexively rejected.

GRAVE CONCERNS OVER TAX CREDIT TRAFFICKING

We are particularly concerned with the expansion of tax credit bonds in this bill. These bonds allow the purchaser to receive a federal tax credit in lieu of interest payments. Allowing states and local municipalities to issue tax credit bonds is simply an end run around the federal appropriations process.

Nevertheless, we understand that politicians like to dole out goodies. The Appropriations Committee shouldn't have all the fun. But what is disturbing is the high price of this kind of spending through the tax code.

In 2004, the Congressional Budget Office reported that the nonstandard nature of tax credit bonds reduces their liquidity, leading investors to demand a premium. As such, the cost to the federal government of using tax credit bonds is greater than the cost of financing appropriations through conventional borrowing by the Treasury Department. We do not understand why the Federal government would choose such an inefficient funding mechanism.

Even more so, we are opposed to the "strippable" feature of the tax credit bonds, an unprecedented expansion of tax credit bonds that will permit the tax credit portion of the debt to be separated from the principal and sold off to taxpayers with no other connection to the bond itself. We have substantial concerns about the ability to track the holders of these stripped credits and find this to be an odd result for a Congress that has been so concerned about the "tax gap."

Just as in the world of fashion, what is old is new again. Strippable tax credit bonds strike chords reminiscent of the ill-fated "safe-harbor leasing" provision enacted in 1981, which allowed businesses to buy and sell tax attributes. But negative publicity came soon after passage, as stories proliferated about companies eliminating all of their tax liabilities by entering into "leasing" transactions with companies who could not use the deductions or tax credits associated with the property.

A year later, in 1982, Congress repealed safe-harbor leasing. Although no Republican Member of the Committee served in the 97th Congress, the legislative history suggests the prompt reversal was necessitated by the tax-avoidance opportunities that safe-harbor leasing created and the adverse public reaction that followed. Concerns were raised that institutionalized commerce in tax benefits was likely to diminish respect for and compliance with the tax laws on the part of the public.

We do not understand why the Majority would want to rush headlong into the mistakes of the past, especially as two of the senior Democrats on our panel were among the 226 Members of the

House voting in 1982 to pass the bill that repealed safe harbor leasing. We can only wonder whether today's Majority will, like our colleagues a quarter of a century ago, beat a similarly hasty retreat and undo this mistake before the end of the 110th Congress.

ACCIDENTAL POLICY

The legislation does seem to include, albeit accidentally, a few provisions that can actually be used to reduce our dependence on other countries for energy. While we do not support the use of tax credit bonds, as approved by the Committee, these bonds could be used to fund coal-to-liquid plants. While the authors may not have intended the use of these provisions in such a way, we have little doubt that leaders in states across the country will be eager to do so.

Specifically, the bill allows the proceeds of tax credit bonds to be used for projects to "promote the commercialization of technologies for the capture and sequestration of carbon dioxide." It does not say that the project must capture and sequester all of the carbon dioxide produced. So the bonds could be used to support carbon sequestration efforts that are a necessary part of new coal-to-liquids facilities.

We very much doubt this accidental policy will remain in the bill for long. Before it goes to the House Floor, we expect changes will be made to "fix" this "error." Similarly, we expect the Majority will modify a provision that could allow the proceeds of the tax credit bonds to be used to promote the expansion of nuclear power.

CONCLUSION

We share our colleagues' interest in finding ways to increase our energy independence and reduce the emission of greenhouse gases. But we were presented with a bill that does not seem to move us close to those goals and, in many ways, seems to move in the opposite direction.

JIM MCCRERY.
PHIL ENGLISH.
JERRY WELLER.
RON LEWIS.
KEVIN BRADY.
KENNY HULSHOF.
ERIC CANTOR.
DEVIN NUNES.
PAT TIBERI.
JON PORTER.

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