

111TH CONGRESS
1ST SESSION

H. R. 3659

Amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid for energy efficient property placed in service in commercial buildings pursuant to an approved energy efficiency plan.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2009

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

A BILL

Amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid for energy efficient property placed in service in commercial buildings pursuant to an approved energy efficiency plan.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Building Energy Tax
5 Credit Act of 2009”.

6 **SEC. 2. COMMERCIAL BUILDING ENERGY PROJECT CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by
 2 adding at the end the following new section:

3 **“SEC. 45R. COMMERCIAL BUILDING ENERGY PROJECT**
 4 **CREDIT.**

5 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-
 6 tion 38, the commercial building energy project credit is
 7 an amount equal to 35 percent of the cost of energy con-
 8 servation commercial building property placed in service
 9 by the taxpayer.

10 “(b) MAXIMUM AMOUNT OF CREDIT.—The credit
 11 under subsection (a) with respect to any building for any
 12 taxable year shall not exceed the excess (if any) of—

13 “(1) the product of—

14 “(A) \$4.00, and

15 “(B) the square footage of the building,
 16 over

17 “(2) the aggregate credit allowed under sub-
 18 section (a) with respect to the building for all prior
 19 taxable years.

20 “(c) ENERGY CONSERVATION COMMERCIAL BUILD-
 21 ING PROPERTY.—For purposes of this section, the term
 22 ‘energy conservation commercial building property’ means
 23 property—

24 “(1) with respect to which depreciation (or am-
 25 ortization in lieu of depreciation) is allowable,

1 “(2) which is installed on or in any building
2 which is located in the United States, and

3 “(3) which is installed as part of a commercial
4 building energy project.

5 “(d) COMMERCIAL BUILDING ENERGY PROJECT.—
6 For purposes of this section, the term ‘commercial build-
7 ing energy project’ means a project—

8 “(1)(A) to install energy efficient commercial
9 building property (as defined in section 179D(c)), or

10 “(B) with respect to a building, to achieve an
11 energy consumption rate which is not more 60 per-
12 cent of the energy consumption rate under the
13 ASHRAE Standard 90.1–2007 for commercial
14 buildings, and

15 “(2) with respect to which credit amounts have
16 been allocated by an energy credit agency under sub-
17 section (e).

18 “(e) ALLOCATIONS OF CREDIT AMOUNTS.—

19 “(1) CREDIT LIMITATION WITH RESPECT TO
20 PROJECT.—The amount of credit determined under
21 this section for any taxable year with respect to any
22 project shall not exceed the State energy credit dol-
23 lar amount allocated to such project under this sub-
24 section.

1 “(2) CREDIT DOLLAR AMOUNT FOR AGEN-
2 CIES.—

3 “(A) IN GENERAL.—The aggregate credit
4 dollar amount which an energy credit agency
5 may allocate for any calendar year is the limita-
6 tion allocated under subparagraph (B) for such
7 calendar year to such agency.

8 “(B) CREDIT LIMITATION ALLOCATED TO
9 STATE ENERGY AGENCIES.—

10 “(i) IN GENERAL.—The Secretary
11 shall allocate for each calendar year the
12 national energy credit limitation among the
13 States in proportion to the population of
14 the State. Such limitation shall be allo-
15 cated to the energy credit agency of each
16 such State. If there is more than 1 energy
17 credit agency of a State, all such agencies
18 shall be treated as a single agency.

19 “(ii) NATIONAL ENERGY CREDIT LIM-
20 TATION.—There is a national energy credit
21 limitation for each calendar year of
22 \$100,000,000.

23 “(iii) POPULATION.—For purposes of
24 this paragraph, population shall be deter-
25 mined in accordance with section 146(j).

1 “(3) SPECIAL RULES.—

2 “(A) BUILDING MUST BE LOCATED WITH-
3 IN JURISDICTION OF CREDIT AGENCY.—An en-
4 ergy credit agency may allocate its aggregate
5 energy credit dollar amount only to projects
6 with respect to buildings located in the jurisdic-
7 tion of the governmental unit of which such
8 agency is a part.

9 “(B) AGENCY ALLOCATIONS IN EXCESS OF
10 LIMIT.—If the aggregate energy credit dollar
11 amounts allocated by an energy credit agency
12 for any calendar year exceed the portion of the
13 national energy credit limitation allocated to
14 such agency for such calendar year, the energy
15 credit dollar amounts so allocated shall be re-
16 duced (to the extent of such excess) for projects
17 in the reverse of the order in which the alloca-
18 tions of such amounts were made.

19 “(4) ENERGY CREDIT AGENCY.—The term ‘en-
20 ergy credit agency’ means any agency authorized to
21 carry out this subsection.

22 “(f) RESPONSIBILITIES OF ENERGY CREDIT AGEN-
23 CIES.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of this section, the energy credit dollar

1 amount with respect to any project shall be zero un-
2 less such amount was allocated pursuant to a quali-
3 fied allocation plan of the energy credit agency
4 which is approved by the governmental unit (in ac-
5 cordance with rules similar to the rules of section
6 147(f)(2) (other than subparagraph (B)(ii) thereof))
7 of which such agency is a part.

8 “(2) QUALIFIED ALLOCATION PLAN.—For pur-
9 poses of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified
11 allocation plan’ means any plan which meets
12 the requirements of subparagraphs (B) through
13 (E).

14 “(B) SELECTION CRITERIA.—The require-
15 ments of this subparagraph are met if such
16 plan sets forth selection criteria to be used to
17 determine priorities of the energy credit agency
18 which are appropriate to local conditions. An
19 energy credit agency may establish selection cri-
20 teria which are more stringent than the require-
21 ments under subsection (d)(1)(B).

22 “(C) PROJECT PREFERENCE.—The re-
23 quirements of this subparagraph are met if
24 such plan gives preference in allocating energy
25 credit dollar amounts among selected projects

1 to those projects which achieve the most energy
2 savings. A plan shall not be treated as failing
3 to meet the requirements of this subsection
4 solely by reason of allocating credit dollar
5 amounts ratably among projects with propor-
6 tionally more allocated to those projects which
7 achieve higher energy savings.

8 “(D) COMPLIANCE MONITORING.—The re-
9 quirements of this subparagraph are met if
10 such plan establishes a program which—

11 “(i) is certified by the Secretary as
12 meeting the requirements of this subpara-
13 graph, and

14 “(ii) provides for monitoring by the
15 agency (or an agent or other private con-
16 tractor of such agency) for noncompliance
17 with the provisions of this section and noti-
18 fying the Internal Revenue Service of any
19 such noncompliance of which such agency
20 becomes aware.

21 “(E) CERTIFICATION METHODS.—

22 “(i) IN GENERAL.—The requirements
23 of this subparagraph are met if such plan
24 has a certification procedure for inspection
25 and testing by qualified individuals under

1 which only projects complying with energy-
2 savings plans and targets are certified.

3 “(ii) QUALIFIED INDIVIDUALS.—Indi-
4 viduals qualified to determine compliance
5 shall be only those individuals who are rec-
6 ognized by the energy credit agency for
7 such purposes.

8 “(iii) PRE-CERTIFICATION.—The re-
9 quirements of this subparagraph shall be
10 treated as met if the plan includes a pre-
11 certification procedure for commercial
12 building energy projects, unless application
13 fees with respect to a project under such
14 pre-certification procedure exceeds 1 per-
15 cent of the estimated cost of such project.

16 “(g) TRANSFER OF CREDIT.—

17 “(1) IN GENERAL.—A person described in para-
18 graph (4) may transfer the credit which would (but
19 for the tax-exempt status of such person) be allow-
20 able under subsection (a) with respect to energy con-
21 servation commercial building property placed in
22 service by such person. A credit may only be trans-
23 ferred once and may only be transferred to another
24 person not described in such paragraph.

1 “(2) TREATMENT OF TRANSFEREE.—The per-
2 son to whom the credit is transferred under this
3 subsection shall be treated for purposes of this title
4 as the taxpayer with respect to whom the credit is
5 allowable under subsection (a).

6 “(3) TREATMENT OF TRANSFEROR.—

7 “(A) TRANSFER PROCEEDS TREATED AS
8 ARISING FROM ESSENTIAL GOVERNMENT FUNC-
9 TION.—Any proceeds derived by a person de-
10 scribed in paragraph (4)(B) from the transfer
11 of any credit under this subsection shall be
12 treated as arising from the exercise of an essen-
13 tial government function.

14 “(B) CREDIT NOT INCOME.—Any proceeds
15 derived from the transfer of a credit under this
16 subsection shall not treated as income for pur-
17 poses of this title.

18 “(4) PERSONS DESCRIBED.—A person is de-
19 scribed in this paragraph if the person is—

20 “(A) an organization exempt from tax
21 under section 501(a), or

22 “(B) any State or political subdivision
23 thereof, the District of Columbia, any posses-
24 sion of the United States, or any agency or in-
25 strumentality of any of the foregoing.

1 “(h) DENIAL OF DOUBLE BENEFIT.—No credit shall
2 be allowed under this section for any expense for which
3 a deduction is allowed under any other provision of this
4 chapter.

5 “(i) BASIS REDUCTION.—For purposes of this sub-
6 title, if a credit is allowed under this section with respect
7 to any energy conservation commercial building property,
8 the basis of such property shall be reduced by the amount
9 of the credit so allowed.

10 “(j) REGULATIONS.—The Secretary may prescribe
11 such regulations as may be necessary or appropriate to
12 carry out this section.”.

13 (b) STATE GUIDANCE.—The Secretary of Energy, in
14 consultation with the Secretary of Treasury, shall develop
15 and provide guidance to States and energy credit agencies
16 (as defined in section 45R(e) of the Internal Revenue Code
17 of 1986) for establishing methods of measuring overall en-
18 ergy savings of commercial building energy projects (as
19 defined in section 45R(e) of such Code), including meth-
20 ods for comparing energy savings ratings under industry
21 energy standards for commercial buildings other than
22 ASHRAE Standard 90.1–2007 with such ASHRAE
23 standard.

24 (c) CREDIT TREATED AS PART OF GENERAL BUSI-
25 NESS CREDIT.—Subsection (b) of section 38 of such Code

1 is amended by striking “plus” at the end of paragraph
2 (33), by striking the period at the end of paragraph (34)
3 and inserting “, plus”, and by adding at the end the fol-
4 lowing new paragraph:

5 “(35) commercial building energy credit deter-
6 mined under section 45R(a).”.

7 (d) CONFORMING AMENDMENT.—Subsection (a) of
8 section 1016 of such Code is amended by striking “and”
9 at the end of paragraph (36), by striking the period at
10 the end of paragraph (37) and inserting “, and”, and by
11 adding at the end the following new paragraph:

12 “(38) to the extent provided in section 45R(i).”.

13 (e) CLERICAL AMENDMENT.—The table of sections
14 for subpart D of part IV of subchapter A of chapter 1
15 is amended by adding at the end the following new item:

“Sec. 45R. Commercial building energy project credit.”.

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

