

112TH CONGRESS
2D SESSION

S. 3352

To amend the Internal Revenue Code of 1986 to improve and extend certain energy-related tax provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2012

Mr. BINGAMAN (for himself, Ms. SNOWE, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve and extend certain energy-related tax provisions, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Expanding Industrial Energy and Water Efficiency In-
7 centives Act of 2012”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-
9 wise expressly provided, whenever in this Act an amend-
10 ment or repeal is expressed in terms of an amendment

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

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

- Sec. 1. Short title; amendment of 1986 Code; table of contents.
- Sec. 2. Modifications in credit for combined heat and power system property.
- Sec. 3. Motor energy efficiency improvement tax credit.
- Sec. 4. Credit for replacement of CFC refrigerant chiller.
- Sec. 5. Qualifying efficient industrial process water use project credit.
- Sec. 6. Investment tax credit for biomass heating property.

6 **SEC. 2. MODIFICATIONS IN CREDIT FOR COMBINED HEAT**
 7 **AND POWER SYSTEM PROPERTY.**

8 (a) MODIFICATION OF CERTAIN CAPACITY LIMITA-
 9 TIONS.—Section 48(c)(3)(B) is amended—

- 10 (1) by striking “15 megawatts” in clause (ii)
- 11 and inserting “25 megawatts”,
- 12 (2) by striking “20,000 horsepower” in clause
- 13 (ii) and inserting “34,000 horsepower”, and
- 14 (3) by striking clause (iii).

15 (b) NONAPPLICATION OF CERTAIN RULES.—Section
 16 48(c)(3)(C) is amended by adding at the end the following
 17 new clause:

- 18 “(iv) NONAPPLICATION OF CERTAIN
- 19 RULES.—For purposes of determining if
- 20 the term ‘combined heat and power system
- 21 property’ includes technologies which gen-
- 22 erate electricity or mechanical power using

1 back-pressure steam turbines in place of
 2 existing pressure-reducing valves or which
 3 make use of waste heat from industrial
 4 processes such as by using organic
 5 rankine, stirling, or kalina heat engine sys-
 6 tems, subparagraph (A) shall be applied
 7 without regard to clause (ii).”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to periods after the date of the
 10 enactment of this Act, under rules similar to the rules of
 11 section 48(m) of the Internal Revenue Code of 1986 (as
 12 in effect on the day before the date of the enactment of
 13 the Revenue Reconciliation Act of 1990).

14 **SEC. 3. MOTOR ENERGY EFFICIENCY IMPROVEMENT TAX**
 15 **CREDIT.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
 17 chapter A of chapter 1 is amended by adding at the end
 18 the following new section:

19 **“SEC. 45R. MOTOR ENERGY EFFICIENCY IMPROVEMENT**
 20 **TAX CREDIT.**

21 “(a) IN GENERAL.—For purposes of section 38, the
 22 motor energy efficiency improvement tax credit deter-
 23 mined under this section for the taxable year is an amount
 24 equal to \$120 multiplied by the motor horsepower of an
 25 appliance, machine, or equipment—

1 “(1) manufactured in such taxable year by a
2 manufacturer which incorporates an advanced motor
3 and drive system into a newly designed appliance,
4 machine, or equipment or into a redesigned appli-
5 ance, machine, or equipment which did not pre-
6 viously make use of the advanced motor and drive
7 system, or

8 “(2) placed back into service in such taxable
9 year by an end user which upgrades an existing ap-
10 pliance, machine, or equipment with an advanced
11 motor and drive system.

12 For any advanced motor and drive system with a total
13 horsepower of less than 10, such motor energy efficiency
14 improvement tax credit is an amount which bears the
15 same ratio to \$120 as such total horsepower bears to 1
16 horsepower.

17 “(b) **ADVANCED MOTOR AND DRIVE SYSTEM.**—For
18 purposes of this section, the term ‘advanced motor and
19 drive system’ means a motor and any required associated
20 electronic control which—

21 “(1) offers variable or multiple speed operation,
22 and

23 “(2) uses permanent magnet technology, elec-
24 tronically commutated motor technology, switched
25 reluctance motor technology, synchronous reluctance,

1 or such other motor and drive systems technologies
2 as determined by the Secretary of Energy.

3 “(c) AGGREGATE PER TAXPAYER LIMITATION.—

4 “(1) IN GENERAL.—The amount of the credit
5 determined under this section for any taxpayer for
6 any taxable year shall not exceed the excess (if any)
7 of \$2,000,000 over the aggregate credits allowed
8 under this section with respect to such taxpayer for
9 all prior taxable years.

10 “(2) AGGREGATION RULES.—For purposes of
11 this section, all persons treated as a single employer
12 under subsections (a) and (b) of section 52 shall be
13 treated as 1 taxpayer.

14 “(d) SPECIAL RULES.—

15 “(1) BASIS REDUCTION.—For purposes of this
16 subtitle, the basis of any property for which a credit
17 is allowable under subsection (a) shall be reduced by
18 the amount of such credit so allowed.

19 “(2) NO DOUBLE BENEFIT.—No other credit
20 shall be allowable under this chapter for property
21 with respect to which a credit is allowed under this
22 section.

23 “(3) PROPERTY USED OUTSIDE UNITED STATES
24 NOT QUALIFIED.—No credit shall be allowable under

1 subsection (a) with respect to any property referred
2 to in section 50(b)(1).

3 “(e) APPLICATION.—This section shall not apply to
4 property manufactured or placed back into service before
5 the date which is 6 months after the date of the enactment
6 of this section or after December 31, 2015.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 38(b) is amended by striking “plus”
9 at the end of paragraph (34), by striking the period
10 at the end of paragraph (35) and inserting “, plus”,
11 and by adding at the end the following new para-
12 graph:

13 “(36) the motor energy efficiency improvement
14 tax credit determined under section 45R.”.

15 (2) Section 1016(a) is amended by striking
16 “and” at the end of paragraph (36), by striking the
17 period at the end of paragraph (37) and inserting “,
18 and”, and by adding at the end the following new
19 paragraph:

20 “(38) to the extent provided in section
21 45R(d)(1).”.

22 (3) The table of sections for subpart D of part
23 IV of subchapter A of chapter 1 is amended by add-
24 ing at the end the following new item:

“Sec. 45R. Motor energy efficiency improvement tax credit.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to property manufactured or
 3 placed back into service after the date which is 6 months
 4 after the date of the enactment of this Act.

5 **SEC. 4. CREDIT FOR REPLACEMENT OF CFC REFRIGERANT**
 6 **CHILLER.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
 8 chapter A of chapter 1, as amended by this Act, is amend-
 9 ed by adding at the end the following new section:

10 **“SEC. 45S. CFC CHILLER REPLACEMENT CREDIT.**

11 “(a) IN GENERAL.—For purposes of section 38, the
 12 CFC chiller replacement credit determined under this sec-
 13 tion for the taxable year is an amount equal to—

14 “(1) \$150 multiplied by the tonnage rating of
 15 a CFC chiller replaced with a new efficient chiller
 16 that is placed in service by the taxpayer during the
 17 taxable year, plus

18 “(2) if all chilled water distribution pumps con-
 19 nected to the new efficient chiller include variable
 20 frequency drives, \$100 multiplied by any tonnage
 21 downsizing.

22 “(b) CFC CHILLER.—For purposes of this section,
 23 the term ‘CFC chiller’ includes property which—

24 “(1) was installed after 1980 and before 1993,

25 “(2) utilizes chlorofluorocarbon refrigerant, and

1 “(3) until replaced by a new efficient chiller,
2 has remained in operation and utilized for cooling a
3 commercial building.

4 “(c) NEW EFFICIENT CHILLER.—For purposes of
5 this section, the term ‘new efficient chiller’ includes a
6 water-cooled chiller which is certified to meet efficiency
7 standards effective on January 1, 2010, as defined in table
8 6.8.1c in Addendum M to Standard 90.1–2007 of the
9 American Society of Heating, Refrigerating, and Air Con-
10 ditioning Engineers.

11 “(d) TONNAGE DOWNSIZING.—For purposes of this
12 section, the term ‘tonnage downsizing’ means the amount
13 by which the tonnage rating of the CFC chiller exceeds
14 the tonnage rating of the new efficient chiller.

15 “(e) ENERGY AUDIT.—As a condition of receiving a
16 tax credit under this section, an energy audit shall be per-
17 formed on the building prior to installation of the new effi-
18 cient chiller, identifying cost-effective energy-saving meas-
19 ures, particularly measures that could contribute to chiller
20 downsizing. The audit shall satisfy criteria that shall be
21 issued by the Secretary of Energy.

22 “(f) PROPERTY USED BY TAX-EXEMPT ENTITY.—In
23 the case of a CFC chiller replaced by a new efficient chiller
24 the use of which is described in paragraph (3) or (4) of
25 section 50(b), the person who sold such new efficient chill-

1 er to the entity shall be treated as the taxpayer that placed
 2 in service the new efficient chiller that replaced the CFC
 3 chiller, but only if such person clearly discloses to such
 4 entity in a document the amount of any credit allowable
 5 under subsection (a) and the person certifies to the Sec-
 6 retary that the person reduced the price the entity paid
 7 for such new efficient chiller by the entire amount of such
 8 credit.

9 “(g) TERMINATION.—This section shall not apply to
 10 replacements made after December 31, 2015.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 38(b), as amended by this Act, is
 13 amended by striking “plus” at the end of paragraph
 14 (35), by striking the period at the end of paragraph
 15 (36) and inserting “, plus”, and by adding at the
 16 end the following new paragraph:

17 “(37) the CFC chiller replacement credit deter-
 18 mined under section 45S.”.

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

“Sec. 45S. CFC chiller replacement credit.”.

23 (c) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to replacements made after the
 25 date of the enactment of this Act.

1 **SEC. 5. QUALIFYING EFFICIENT INDUSTRIAL PROCESS**
2 **WATER USE PROJECT CREDIT.**

3 (a) IN GENERAL.—Section 46 is amended by striking
4 “and” at the end of paragraph (4), by striking the period
5 at the end of paragraph (5), and by adding at the end
6 the following new paragraph:

7 “(6) the qualifying efficient industrial process
8 water use project credit.”.

9 (b) AMOUNT OF CREDIT.—Subpart E of part IV of
10 subchapter A of chapter 1 is amended by inserting after
11 section 48C the following new section:

12 **“SEC. 48D. QUALIFYING EFFICIENT INDUSTRIAL PROCESS**
13 **WATER USE PROJECT CREDIT.**

14 “(a) IN GENERAL.—

15 “(1) ALLOWANCE OF CREDIT.—For purposes of
16 section 46, the qualifying efficient industrial process
17 water use project credit for any taxable year is an
18 amount equal to the applicable percentage of the
19 qualified investment for such taxable year with re-
20 spect to any qualifying efficient industrial process
21 water use project of the taxpayer.

22 “(2) APPLICABLE PERCENTAGE.—For purposes
23 of subsection (a)—

24 “(A) IN GENERAL.—The applicable per-
25 centage is—

1 “(i) 10 percent in the case of a quali-
2 fying efficient industrial process water use
3 project which achieves a 25 percent or
4 greater (but less than 50 percent) reduc-
5 tion in water use for industrial purposes,

6 “(ii) 20 percent in the case of a quali-
7 fying efficient industrial process water use
8 project which achieves a 50 percent or
9 greater (but less than 75 percent) reduc-
10 tion in water use for industrial purposes,
11 and

12 “(iii) 30 percent in the case of a
13 qualifying efficient industrial process water
14 use project which achieves a 75 percent or
15 greater reduction in water use for indus-
16 trial purposes.

17 “(B) WATER USE.—For purposes of sub-
18 paragraph (A)—

19 “(i) MEASUREMENT OF REDUCTION
20 IN WATER USE.—

21 “(I) IN GENERAL.—The taxpayer
22 shall elect one of the methods speci-
23 fied in clause (ii) for measuring the
24 reduction in water use achieved by a

1 qualifying efficient industrial process
2 water use project.

3 “(II) IRREVOCABLE ELECTION.—

4 An election under subclause (I), once
5 made with respect to a qualifying effi-
6 cient industrial process water use
7 project, shall apply to the taxable year
8 for which made and all subsequent
9 taxable years, and may not be re-
10 voked.

11 “(III) PROJECTED SAVINGS.—

12 The credit under subsection (a) may
13 be claimed on the basis of a reduction
14 in water use which is projected, by a
15 registered professional engineer who is
16 not a related person (within the mean-
17 ing of section 144(a)(3)(A)) to the
18 taxpayer or the installer of eligible
19 property, to be achieved by a quali-
20 fying efficient industrial process water
21 use project. Such projection, if used
22 as a basis for determining the credit
23 under subsection (a), shall be included
24 with the return of tax.

1 “(ii) METHODS SPECIFIED.—The
2 methods specified in this clause are—

3 “(I) a measurement of the per-
4 centage reduction in water use per
5 unit of product manufactured by the
6 taxpayer, and

7 “(II) a measurement of the per-
8 centage reduction in water use per
9 pound of product manufactured by
10 the taxpayer.

11 “(b) QUALIFIED INVESTMENT.—

12 “(1) IN GENERAL.—For purposes of subsection
13 (a), the qualified investment for any taxable year is
14 the basis of eligible property placed in service by the
15 taxpayer during such taxable year which is part of
16 a qualifying efficient industrial process water use
17 project.

18 “(2) EXCEPTIONS.—Such term shall not in-
19 clude any portion of the basis related to—

20 “(A) permitting,

21 “(B) land acquisition, or

22 “(C) infrastructure not directly associated
23 with the implementation of the technology or
24 process improvements of the qualifying efficient
25 industrial process water use project.

1 “(3) CERTAIN QUALIFIED PROGRESS EXPENDI-
2 TURES RULES MADE APPLICABLE.—Rules similar to
3 the rules of subsections (c)(4) and (d) of section 46
4 (as in effect on the day before the enactment of the
5 Revenue Reconciliation Act of 1990) shall apply for
6 purposes of this section.

7 “(4) SPECIAL RULE FOR SUBSIDIZED ENERGY
8 FINANCING.—Rules similar to the rules of section
9 48(a)(4) (without regard to subparagraph (D) there-
10 of) shall apply for purposes of this section.

11 “(5) LIMITATION.—The amount which is treat-
12 ed for all taxable years with respect to any quali-
13 fying efficient industrial process water use project
14 with respect to any site shall not exceed
15 \$10,000,000.

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

17 “(1) QUALIFYING EFFICIENT INDUSTRIAL
18 PROCESS WATER USE PROJECT.—

19 “(A) IN GENERAL.—The term ‘qualifying
20 efficient industrial process water use project’
21 means, with respect to any site, a project which
22 retrofits or expands an existing facility to im-
23 plement technology or process improvements
24 which are designed to reduce water use for sys-
25 tems that use any form of water in the produc-

1 tion of goods in the manufacturing sector (as
2 defined in North American Industrial Classi-
3 fication System codes 31, 32, and 33), includ-
4 ing any system that uses water for heating,
5 cooling, or energy production for the production
6 of goods in the trade or business of manufac-
7 turing. Such term shall not include a project
8 which alters an existing facility to change the
9 type of goods produced by such facility.

10 “(B) SYSTEMS.—For purposes of subpara-
11 graph (A), the term ‘system’ does not include
12 any system which does not encompass 1 or
13 more complete processes.

14 “(2) ELIGIBLE PROPERTY.—The term ‘eligible
15 property’ means any property—

16 “(A) which is part of a qualifying efficient
17 industrial process water use project and which
18 is necessary for the reduction in water use de-
19 scribed in paragraph (1),

20 “(B)(i) the construction, reconstruction, or
21 erection of which is completed by the taxpayer,
22 or

23 “(ii) which is acquired by the taxpayer if
24 the original use of such property commences
25 with the taxpayer, and

1 “(C) with respect to which depreciation (or
2 amortization in lieu of depreciation) is allow-
3 able.

4 “(3) WATER USE.—

5 “(A) IN GENERAL.—The term ‘water use’
6 means all water taken for use at the site di-
7 rectly from ground and surface water sources
8 together with any water supplied to the site by
9 a regulated water system.

10 “(B) REGULATED WATER SYSTEM.—The
11 term ‘regulated water system’ means a system
12 that supplies water that has been treated to po-
13 table standards.

14 “(d) TERMINATION.—This section shall not apply to
15 periods after December 31, 2016, under rules similar to
16 the rules of section 48(m) (as in effect on the day before
17 the date of the enactment of the Revenue Reconciliation
18 Act of 1990).”.

19 “(c) CONFORMING AMENDMENTS.—

20 “(1) Section 49(a)(1)(C) is amended by striking
21 “and” at the end of clause (iv), by striking the pe-
22 riod at the end of clause (v) and inserting “, and”,
23 and by adding after clause (v) the following new
24 clause:

1 vide thermal energy in the form of heat,
 2 hot water, or steam for space heating, air
 3 conditioning, domestic hot water, or indus-
 4 trial process heat, but only with respect to
 5 periods ending before January 1, 2016.”.

6 (b) 30 PERCENT AND 15 PERCENT CREDITS.—

7 (1) IN GENERAL.—Subparagraph (A) of section
 8 48(a)(2) is amended—

9 (A) by redesignating clause (ii) as clause
 10 (iii),

11 (B) by inserting after clause (i) the fol-
 12 lowing new clause:

13 “(ii) except as provided in clause
 14 (i)(V), 15 percent in the case of energy
 15 property described in paragraph
 16 (3)(A)(viii), and”, and

17 (C) by inserting “or (ii)” after “clause (i)”
 18 in clause (iii), as so redesignated.

19 (2) INCREASED CREDIT FOR GREATER EFFI-
 20 CIENCY.—Clause (i) of section 48(a)(2)(A) is
 21 amended by striking “and” at the end of subclause
 22 (III) and by inserting after subclause (IV) the fol-
 23 lowing new subclause:

24 “(V) energy property described in
 25 paragraph (3)(A)(viii) which operates

1 at an output efficiency of not less
2 than 80 percent (measured by the
3 higher heating value of the fuel),”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to periods after the date of the
6 enactment of this Act, in taxable years ending after such
7 date, under rules similar to the rules of section 48(m) of
8 the Internal Revenue Code of 1986 (as in effect on the
9 day before the date of the enactment of the Revenue Rec-
10 onciliation Act of 1990).

○