

107TH CONGRESS  
1ST SESSION

# S. 558

To amend the Internal Revenue Code of 1986 to provide tax credits for investment in Indian reservation economic development, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 2001

Mr. McCAIN, (for himself, Mr. DASCHLE, Mr. INOUYE, Mr. BAUCUS, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax credits for investment in Indian reservation economic development, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Reservation  
5 Economic Investment Act of 2001”.

6 **SEC. 2. INVESTMENT TAX CREDIT FOR PROPERTY ON IN-  
7 DIAN RESERVATIONS.**

8       (a) ALLOWANCE OF INDIAN RESERVATION CRED-  
9 IT.—Section 46 of the Internal Revenue Code of 1986 (re-

1 lating to investment credits) is amended by striking “and”  
 2 at the end of paragraph (2), by striking the period at the  
 3 end of paragraph (3) and inserting “, and”, and by adding  
 4 after paragraph (3) the following new paragraph:

5 “(4) the Indian reservation credit.”.

6 (b) AMOUNT OF INDIAN RESERVATION CREDIT.—

7 (1) IN GENERAL.—Section 48 of such Code (re-  
 8 lating to the energy credit and the reforestation  
 9 credit) is amended by adding after subsection (b)  
 10 the following new subsection:

11 “(c) INDIAN RESERVATION CREDIT.—

12 “(1) IN GENERAL.—For purposes of section 46,  
 13 the Indian reservation credit for any taxable year is  
 14 the Indian reservation percentage of the qualified in-  
 15 vestment in qualified Indian reservation property  
 16 placed in service during such taxable year, deter-  
 17 mined in accordance with the following table:

**“In the case of qualified In- The Indian reservation percent-  
 dian reservation property age is—  
 which is—**

Reservation personal property .....	10
New reservation construction property .....	15
Reservation infrastructure investment .....	15

18 “(2) QUALIFIED INVESTMENT IN QUALIFIED  
 19 INDIAN RESERVATION PROPERTY DEFINED.—For  
 20 purposes of this subpart—

21 “(A) IN GENERAL.—The term ‘qualified  
 22 Indian reservation property’ means property—

1                     “(i) which is—  
2                         “(I) reservation personal prop-  
3                         erty;  
4                         “(II) new reservation construc-  
5                         tion property; or  
6                         “(III) reservation infrastructure  
7                         investment; and  
8                         “(ii) not acquired (directly or indi-  
9                         rectly) by the taxpayer from a person who  
10                         is related to the taxpayer (within the  
11                         meaning of section 465(b)(3)(C)).

12                     The term ‘qualified Indian reservation property’  
13                         does not include any property (or any portion  
14                         thereof) placed in service for purposes of con-  
15                         ducting or housing class I, II, or III gaming (as  
16                         defined in section 4 of the Indian Gaming Reg-  
17                         ulatory Act (25 U.S.C. 2703)).

18                     “(B) QUALIFIED INVESTMENT.—The term  
19                         ‘qualified investment’ means—

20                         “(i) in the case of reservation infra-  
21                         structure investment, the amount expended  
22                         by the taxpayer for the acquisition or con-  
23                         struction of the reservation infrastructure  
24                         investment; and

1                             “(ii) in the case of all other qualified  
2                             Indian reservation property, the taxpayer’s  
3                             basis for such property.

4                             “(C) RESERVATION PERSONAL PROPERTY.—The term ‘reservation personal prop-  
5                             erty’ means qualified personal property which is  
6                             used by the taxpayer predominantly in the ac-  
7                             tive conduct of a trade or business within an  
8                             Indian reservation. Property shall not be treat-  
9                             ed as ‘reservation personal property’ if it is  
10                             used or located outside the Indian reservation  
11                             on a regular basis.

13                             “(D) QUALIFIED PERSONAL PROPERTY.—  
14                             The term ‘qualified personal property’ means  
15                             property—

16                             “(i) for which depreciation is allow-  
17                             able under section 168;

18                             “(ii) which is not—

19                             “(I) nonresidential real property;

20                             “(II) residential rental property;

21                             or

22                             “(III) real property which is not  
23                             described in subclause (I) or (II) and  
24                             which has a class life of more than  
25                             12.5 years.

1 For purposes of this subparagraph, the  
2 terms ‘nonresidential real property’, ‘resi-  
3 dential rental property’, and ‘class life’  
4 have the respective meanings given such  
5 terms by section 168.

6 “(E) NEW RESERVATION CONSTRUCTION  
7 PROPERTY.—The term ‘new reservation con-  
8 struction property’ means qualified real  
9 property—

10 “(i) which is located in an Indian res-  
11 ervation;

12 “(ii) which is used by the taxpayer  
13 predominantly in the active conduct of a  
14 trade or business within an Indian reserva-  
15 tion; and

16 “(iii) which is originally placed in  
17 service by the taxpayer.

18 “(F) QUALIFIED REAL PROPERTY.—The  
19 term ‘qualified real property’ means property  
20 for which depreciation is allowable under sec-  
21 tion 168 and which is described in subclause  
22 (I), (II), or (III) of subparagraph (D)(ii).

23 “(G) RESERVATION INFRASTRUCTURE IN-  
24 VESTMENT.—

1                     “(i) IN GENERAL.—The term ‘reserva-  
2                     tion infrastructure investment’ means  
3                     qualified personal property or qualified real  
4                     property which—

5                         “(I) benefits the tribal infrastruc-  
6                     ture;

7                         “(II) is available to the general  
8                     public; and

9                         “(III) is placed in service in con-  
10                     nection with the taxpayer’s active con-  
11                     duct of a trade or business within an  
12                     Indian reservation.

13                         “(ii) PROPERTY MAY BE LOCATED  
14                     OUTSIDE THE RESERVATION.—Qualified  
15                     personal property and qualified real prop-  
16                     erty used or located outside an Indian res-  
17                     ervation shall be reservation infrastructure  
18                     investment only if its purpose is to connect  
19                     to existing tribal infrastructure in the res-  
20                     ervation, and shall include, but not be lim-  
21                     ited to, roads, power lines, water systems,  
22                     railroad spurs, and communications facili-  
23                     ties.

24                         “(H) COORDINATION WITH OTHER CRED-  
25                     ITS.—The term ‘qualified Indian reservation

1           property' shall not include any property with re-  
2           spect to which the energy credit or the rehabili-  
3           tation credit is allowed.

4           “(3) REAL ESTATE RENTALS.—For purposes of  
5           this section, the rental to others of real property lo-  
6           cated within an Indian reservation shall be treated  
7           as the active conduct of a trade or business in an  
8           Indian reservation.

9           “(4) INDIAN RESERVATION DEFINED.—For  
10          purposes of this subpart, the term ‘Indian reserva-  
11          tion’ means—

12           “(A) a reservation, as defined in section  
13          4(10) of the Indian Child Welfare Act of 1978  
14          (25 U.S.C. 1903(10)), or

15           “(B) lands held under the provisions of the  
16          Alaska Native Claims Settlement Act (43  
17          U.S.C. 1601 et seq.) by a Native corporation as  
18          defined in section 3(m) of such Act (43 U.S.C.  
19          1602(m)).

20           “(5) LIMITATION BASED ON UNEMPLOY-  
21          MENT.—

22           “(A) GENERAL RULE.—The Indian res-  
23          ervation credit allowed under section 46 for any  
24          taxable year shall equal—

1                     “(i) if the Indian unemployment rate  
2                     on the applicable Indian reservation for  
3                     which the credit is sought exceeds 300 per-  
4                     cent of the national average unemployment  
5                     rate at any time during the calendar year  
6                     in which the property is placed in service  
7                     or during the immediately preceding 2 cal-  
8                     endar years, 100 percent of such credit;

9                     “(ii) if such Indian unemployment  
10                    rate exceeds 150 percent but not 300 per-  
11                    cent, 50 percent of such credit; and

12                    “(iii) if such Indian unemployment  
13                    rate does not exceed 150 percent, 0 per-  
14                    cent of such credit.

15                    “(B) SPECIAL RULE FOR LARGE  
16                    PROJECTS.—In the case of a qualified Indian  
17                    reservation property which has (or is a compo-  
18                    nent of a project which has) a projected con-  
19                    struction period of more than 2 years or a cost  
20                    of more than \$1,000,000, subparagraph (A)  
21                    shall be applied by substituting ‘during the ear-  
22                    lier of the calendar year in which the taxpayer  
23                    enters into a binding agreement to make a  
24                    qualified investment or the first calendar year  
25                    in which the taxpayer has expended at least 10

1 percent of the taxpayer's qualified investment,  
2 or the preceding calendar year' for 'during the  
3 calendar year in which the property is placed in  
4 service or during the immediately preceding 2  
5 calendar years'.

6 "(C) DETERMINATION OF INDIAN UNEM-  
7 PLOYMENT.—For purposes of this paragraph,  
8 with respect to any Indian reservation, the In-  
9 dian unemployment rate shall be based upon  
10 Indians unemployed and able to work, and shall  
11 be certified by the Secretary of the Interior.

12 "(6) COORDINATION WITH NONREVENUE  
13 LAWS.—Any reference in this subsection to a provi-  
14 sion not contained in this title shall be treated for  
15 purposes of this subsection as a reference to such  
16 provision as in effect on the date of the enactment  
17 of this paragraph.”.

18 (2) LODGING TO QUALIFY.—Paragraph (2) of  
19 section 50(b) of such Code (relating to property used  
20 for lodging) is amended by striking “and” at the end  
21 of subparagraph (C), by striking the period at the  
22 end of subparagraph (D) and inserting “; and”, and  
23 by adding at the end the following subparagraph:

24 "(E) new reservation construction prop-  
25 erty.”.

1       (c) RECAPTURE.—Subsection (a) of section 50 of  
2 such Code (relating to recapture in case of dispositions,  
3 etc.), is amended by adding at the end the following new  
4 paragraph:

5               “(6) SPECIAL RULES FOR INDIAN RESERVATION  
6 PROPERTY.—

7               “(A) IN GENERAL.—If, during any taxable  
8 year, property with respect to which the tax-  
9 payer claimed an Indian reservation credit—

10               “(i) is disposed of; or

11               “(ii) in the case of reservation per-  
12 sonal property—

13               “(I) otherwise ceases to be in-  
14 vestment credit property with respect  
15 to the taxpayer; or

16               “(II) is removed from the Indian  
17 reservation, converted, or otherwise  
18 ceases to be Indian reservation prop-  
19 erty,

20               the tax under this chapter for such taxable year  
21 shall be increased by the amount described in  
22 subparagraph (B).

23               “(B) AMOUNT OF INCREASE.—The in-  
24 crease in tax under subparagraph (A) shall  
25 equal the aggregate decrease in the credits al-

10                             “(C) COORDINATION WITH OTHER RECAP-  
11                             TURE PROVISIONS.—In the case of property to  
12                             which this paragraph applies, paragraph (1)  
13                             shall not apply and the rules of paragraphs (3),  
14                             (4), and (5) shall apply.”.

15 (d) BASIS ADJUSTMENT TO REFLECT INVESTMENT  
16 CREDIT.—Paragraph (3) of section 50(c) of such Code  
17 (relating to basis adjustment to investment credit prop-  
18 erty) is amended by striking “energy credit or reforest-  
19 ation credit” and inserting “energy credit, reforestation  
20 credit, or Indian reservation credit other than with respect  
21 to any expenditure for new reservation construction prop-  
22 erty”.

23 (e) CERTAIN GOVERNMENTAL USE PROPERTY TO  
24 QUALIFY.—Paragraph (4) of section 50(b) of such Code  
25 (relating to property used by governmental units or for-

1 eign persons or entities) is amended by redesignating sub-  
2 paragraphs (D) and (E) as subparagraphs (E) and (F),  
3 respectively, and by inserting after subparagraph (C) the  
4 following new subparagraph:

5                 “(D) EXCEPTION FOR RESERVATION IN-  
6 FRASTRUCTURE INVESTMENT.—This paragraph  
7 shall not apply for purposes of determining the  
8 Indian reservation credit with respect to res-  
9 ervation infrastructure investment.”.

10                 (f) APPLICATION OF AT-RISK RULES.—Subpara-  
11 graph (C) of section 49(a)(1) of such Code is amended  
12 by striking “and” at the end of clause (ii), by striking  
13 the period at the end of clause (iii) and inserting “, and”,  
14 and by adding at the end the following new clause:

15                 “(iv) the qualified investment in qual-  
16 fied Indian reservation property.”.

17                 (g) CLERICAL AMENDMENTS.—

18                 (1) Section 48 of such Code is amended by  
19 striking the heading and inserting the following:

20                 **“SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT; IN-**  
21                 **DIAN RESERVATION CREDIT.”.**

22                 (2) The table of sections for subpart E of part  
23 IV of subchapter A of chapter 1 is amended by  
24 striking the item relating to section 48 and inserting  
25 the following:

“Sec. 48. Energy credit; reforestation credit; Indian reservation credit.”.

1        (h) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to property placed in service after  
3 December 31, 2001.

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