

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.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2001

Mr. MCCAIN, (for himself, Mr. DASCHLE, Mr. INOUE, Mr. BAUCUS, and Mr. CAMPBELL) 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 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- dian reservation property which is—	The Indian reservation percent- age 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 PROP-
 5 ERTY.—The term ‘reservation personal prop-
 6 erty’ means qualified personal property which is
 7 used by the taxpayer predominantly in the ac-
 8 tive conduct of a trade or business within an
 9 Indian reservation. Property shall not be treat-
 10 ed as ‘reservation personal property’ if it is
 11 used or located outside the Indian reservation
 12 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.

For purposes of this subparagraph, the terms ‘nonresidential real property’, ‘residential rental property’, and ‘class life’ have the respective meanings given such terms by section 168.

“(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term ‘new reservation construction property’ means qualified real property—

“(i) which is located in an Indian reservation;

“(ii) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and

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

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

“(G) RESERVATION INFRASTRUCTURE INVESTMENT.—

“(i) IN GENERAL.—The term ‘reservation infrastructure investment’ means qualified personal property or qualified real property which—

“(I) benefits the tribal infrastructure;

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

“(III) is placed in service in connection with the taxpayer’s active conduct of a trade or business within an Indian reservation.

“(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal property and qualified real property used or located outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation, and shall include, but not be limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

“(H) COORDINATION WITH OTHER CREDITS.—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

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

“(C) DETERMINATION OF INDIAN UNEMPLOYMENT.—For purposes of this paragraph, with respect to any Indian reservation, the Indian unemployment rate shall be based upon Indians unemployed and able to work, and shall be certified by the Secretary of the Interior.

“(6) COORDINATION WITH NONREVENUE LAWS.—Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.”.

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

“(E) new reservation construction property.”.

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-

lowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the qualified investment taken into account with respect to the property been limited to an amount which bears the same ratio to the qualified investment with respect to such property as the period such property was held by the taxpayer bears to the applicable recovery period under section 168(g).

“(C) COORDINATION WITH OTHER RECAPTURE PROVISIONS.—In the case of property to which this paragraph applies, paragraph (1) shall not apply and the rules of paragraphs (3), (4), and (5) shall apply.”.

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) of such Code (relating to basis adjustment to investment credit property) is amended by striking “energy credit or reforestation credit” and inserting “energy credit, reforestation credit, or Indian reservation credit other than with respect to any expenditure for new reservation construction property”.

(e) CERTAIN GOVERNMENTAL USE PROPERTY TO QUALIFY.—Paragraph (4) of section 50(b) of such Code (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 quali-
 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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