

107TH CONGRESS
1ST SESSION

S. 765

To amend the Internal Revenue Code of 1986 to provide a carbon sequestration investment tax credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2001

Mr. BROWNBACK (for himself, Mr. REID, Mr. LUGAR, and Mr. DEWINE) 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 a carbon sequestration investment tax credit, 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 “Carbon Sequestration
5 Investment Tax Credit Act”.

6 **SEC. 2. CARBON SEQUESTRATION INVESTMENT TAX**
7 **CREDIT.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 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. 45E. CARBON SEQUESTRATION INVESTMENT CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—

5 “(1) IN GENERAL.—For purposes of section 38,
 6 in the case of an eligible taxpayer’s investment in a
 7 carbon sequestration project approved by the imple-
 8 menting panel under section 2 of the International
 9 Carbon Conservation Act, the carbon sequestration
 10 investment credit determined under this section for
 11 the taxable year is an amount equal to—

12 “(A) \$2.50, multiplied by

13 “(B) the number of tons of carbon the im-
 14 plementing panel determines was sequestered
 15 in such project during the calendar year ending
 16 with or within such taxable year, multiplied by

17 “(C) the percentage of the total investment
 18 in such project which is represented by the in-
 19 vestment in such project which is attributable,
 20 directly or indirectly, to the eligible taxpayer, as
 21 determined by the implementing panel.

22 “(2) AGGREGATE DOLLAR LIMITATION.—The
 23 credit determined under paragraph (1) for any tax-
 24 able year, when added to any credit allowed to the
 25 eligible taxpayer with respect to the such project in

1 any preceding taxable year, shall not exceed 50 per-
 2 cent of the investment attributable to the eligible
 3 taxpayer with respect to such project through such
 4 taxable year.

5 “(b) ANNUAL LIMITATION ON AGGREGATE CREDIT
 6 ALLOWABLE.—

7 “(1) IN GENERAL.—The amount of the carbon
 8 sequestration investment credit determined under
 9 subsection (a) for any taxable year, when added to
 10 all such credits allowed to all eligible taxpayers with
 11 respect to the such project for such taxable year
 12 shall not exceed the credit dollar amount allocated to
 13 such project under this subsection by the imple-
 14 menting panel for the calendar year ending with or
 15 within such taxable year.

16 “(2) TIME FOR MAKING ALLOCATION.—An allo-
 17 cation shall be taken into account under paragraph
 18 (1) only if it is made not later than the close of the
 19 calendar year in which the carbon sequestration
 20 project proposal with respect to such project is ap-
 21 proved by the implementing panel under section 2 of
 22 the International Carbon Conservation Act.

23 “(3) AGGREGATE CREDIT DOLLAR AMOUNT.—
 24 The aggregate credit dollar amount which the imple-

1 menting panel may allocate for any calendar year is
2 equal to \$200,000,000.

3 “(e) ELIGIBLE TAXPAYER; IMPLEMENTING
4 PANEL.—For purposes of this section—

5 “(1) ELIGIBLE TAXPAYER.—A taxpayer is eligi-
6 ble for the credit under this section with respect to
7 a carbon sequestration project if such taxpayer has
8 not elected the application of sections 3 and 4 of the
9 International Carbon Conservation Act with respect
10 to such project.

11 “(2) IMPLEMENTING PANEL.—The term ‘imple-
12 menting panel’ means the implementing panel estab-
13 lished under section 2 of such Act.

14 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

15 “(1) IN GENERAL.—If, at any time during the
16 30-year period of a carbon sequestration project,
17 there is a recapture event with respect to such
18 project, then the tax imposed by this chapter for the
19 taxable year in which such event occurs shall be in-
20 creased by the credit recapture amount.

21 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
22 poses of paragraph (1)—

23 “(A) IN GENERAL.—The credit recapture
24 amount is an amount equal to the recapture
25 percentage of all carbon sequestration invest-

1 ment credits previously allowable to an eligible
2 taxpayer with respect to any investment in such
3 project that is attributable to such taxpayer.

4 “(B) RECAPTURE PERCENTAGE.—The re-
5 capture percentage shall be 100 percent if the
6 recapture event occurs during the first 10 years
7 of the project, 66 $\frac{2}{3}$ percent if the recapture
8 event occurs during the second 10 years of the
9 project, 33 $\frac{1}{3}$ percent if the recapture event oc-
10 curs during the third 10 years of the project,
11 and 0 percent if the recapture event occurs at
12 any time after the 30th year of the project.

13 “(3) RECAPTURE EVENT.—For purposes of
14 paragraph (1), there is a recapture event with re-
15 spect to a carbon sequestration project if—

16 “(A) the eligible taxpayer violates a term
17 or condition of the approval of the project by
18 the implementing panel at any time,

19 “(B) the eligible taxpayer adopts a practice
20 which the implementing panel has specified in
21 its approval of the project as a practice which
22 would tend to defeat the purposes of the carbon
23 sequestration program, or

24 “(C) the eligible taxpayer disposes of any
25 ownership interest arising out of its investment

1 that the implementing panel has determined is
2 attributable to the project, unless the imple-
3 menting panel determines that such disposition
4 will not have any adverse effect on the carbon
5 sequestration project.

6 If an event which otherwise would be a recapture
7 event is outside the control of the eligible taxpayer,
8 as determined by the implementing panel, such event
9 shall not be treated as a recapture event with re-
10 spect to such taxpayer.

11 “(4) SPECIAL RULES.—

12 “(A) TAX BENEFIT RULE.—The tax for
13 the taxable year shall be increased under para-
14 graph (1) only with respect to credits allowed
15 by reason of this section which were used to re-
16 duce tax liability. In the case of credits not so
17 used to reduce tax liability, the carryforwards
18 and carrybacks under section 39 shall be appro-
19 priately adjusted.

20 “(B) NO CREDITS AGAINST TAX.—Any in-
21 crease in tax under this subsection shall not be
22 treated as a tax imposed by this chapter for
23 purposes of determining the amount of any
24 credit under this chapter or for purposes of sec-
25 tion 55.

1 “(g) DISALLOWANCE OF DOUBLE BENEFIT.—

2 “(1) BASIS REDUCTION.—The basis of any in-
3 vestment in a carbon sequestration project shall be
4 reduced by the amount of any credit determined
5 under this section with respect to such investment.

6 “(2) CHARITABLE DEDUCTION DISALLOWED.—

7 No deduction shall be allowed to an eligible taxpayer
8 under section 170 with respect to any contribution
9 which the implementing panel certifies pursuant to
10 section 2 of the International Carbon Conservation
11 Act to the Secretary constitutes an investment in a
12 carbon sequestration project that is attributable to
13 such taxpayer.

14 “(h) CERTIFICATION TO SECRETARY.—The imple-
15 menting panel shall certify to the Secretary before Janu-
16 ary 31 of each year with respect to each eligible taxpayer
17 which has made an investment in a carbon sequestration
18 project—

19 “(1) the amount of the carbon sequestration in-
20 vestment credit allowable to such taxpayer for the
21 preceding calendar year,

22 “(2) whether a recapture event occurred with
23 respect to such taxpayer during the preceding cal-
24 endar year, and

1 “(3) the credit recapture amount, if any, with
 2 respect to such taxpayer for the preceding calendar
 3 year.

4 “(i) REGULATIONS.—The Secretary shall prescribe
 5 such regulations as may be appropriate to carry out this
 6 section, including regulations—

7 “(1) which limit the credit for investments
 8 which are directly or indirectly subsidized by other
 9 Federal benefits,

10 “(2) which prevent the abuse of the provisions
 11 of this section through the use of related parties,
 12 and

13 “(3) which impose appropriate reporting re-
 14 quirements.”.

15 (b) CREDIT MADE PART OF GENERAL BUSINESS
 16 CREDIT.—

17 (1) IN GENERAL.—Subsection (b) of section 38
 18 of the Internal Revenue Code of 1986 is amended by
 19 striking “plus” at the end of paragraph (12), by
 20 striking the period at the end of paragraph (13) and
 21 inserting “, plus”, and by adding at the end the fol-
 22 lowing new paragraph:

23 “(14) the carbon sequestration investment cred-
 24 it determined under section 45E(a).”.

1 (2) LIMITATION ON CARRYBACK.—Subsection
2 (d) of section 39 of such Code is amended by adding
3 at the end the following new paragraph:

4 “(10) NO CARRYBACK OF CARBON SEQUESTRA-
5 TION INVESTMENT CREDIT BEFORE JANUARY 1,
6 2002.—No portion of the unused business credit for
7 any taxable year which is attributable to the credit
8 under section 45E may be carried back to a taxable
9 year ending before January 1, 2002.”.

10 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
11 (c) of section 196 of the Internal Revenue Code of 1986
12 is amended by striking “and” at the end of paragraph (7),
13 by striking the period at the end of paragraph (8) and
14 inserting “, and”, and by adding at the end the following
15 new paragraph:

16 “(9) the carbon sequestration investment credit
17 determined under section 45E(a).”.

18 (d) CLERICAL AMENDMENT.—The table of sections
19 for subpart D of part IV of subchapter A of chapter 1
20 of the Internal Revenue Code of 1986 is amended by add-
21 ing at the end the following new item:

 “Sec. 45E. Carbon sequestration investment credit.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to investments made after Decem-
24 ber 31, 2001.