

108TH CONGRESS
1ST SESSION

H. R. 3531

To amend the Internal Revenue Code of 1986 to provide for a transferable credit against the income tax for producing energy from waste coal.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2003

Mr. MURPHY (for himself, Mr. MURTHA, and Mr. ENGLISH) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for a transferable credit against the income tax for producing energy from waste coal.

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 “Environmental Res-
5 toration Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Coal mining has been an important part of
9 America’s industrial heritage for over 150 years. As
10 coal is removed from underground mines, a large

1 amount of other materials accompanies the coal to
2 the surface. This substance, known as gob, contains
3 a mixture of clay, rocks, soil, minerals and other raw
4 materials. The gob piles contain millions of cubic
5 feet of material known to contribute to acid mine
6 drainage.

7 (2) The mountains of gob contain large
8 amounts of potential energy that can be recycled to
9 create new sources of power. The technology to use
10 the gob pile materials as an efficient alternative en-
11 ergy source has been developed over the past 15
12 years. However, the incentive to invest in the tech-
13 nology has not been pursued due to the high capital-
14 ization and operating costs.

15 (3) Developing alternate energy sources reduces
16 energy costs, reduces dependencies on foreign oil,
17 and improves the competitiveness of American in-
18 dustry. Increasing energy demands, and over reli-
19 ance on limited sources of energy, will result in high-
20 er prices for homeowners and industry. Higher pro-
21 duction costs hurt American jobs, overburdens in-
22 dustry, and stifles economic growth. The develop-
23 ment of alternate energy sources will result in lower
24 prices, a cleaner environment, new manufacturing,
25 and more jobs.

1 (b) PURPOSE.—The purpose of this Act is to encour-
2 age and create incentives for alternate fuel sources to meet
3 increasing demand for homeowners and industries.

4 **SEC. 3. ENERGY PRODUCED FROM WASTE COAL.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 (relating to business related credits) is amended by
8 inserting after section 45F the following new section:

9 **“SEC. 45G. ENERGY PRODUCED FROM WASTE COAL.**

10 “(a) GENERAL RULE.—For purposes of section 38,
11 the waste coal energy production per ton credit for any
12 taxable year is an amount equal to \$1.50 per million Btu
13 of heat input utilized by the taxpayer to produce energy
14 in an eligible facility from qualified waste coal during the
15 10-year period beginning on the date the facility was origi-
16 nally placed in service (or, if later, the date of the enact-
17 ment of this section).

18 “(b) CREDIT REDUCED FOR GRANTS.—The amount
19 of the credit determined under subsection (a) with respect
20 to any project for any taxable year shall be reduced by
21 the amount which is the product of the amount so deter-
22 mined for such year and a fraction—

23 “(1) the numerator of which is the sum, for the
24 taxable year and all prior taxable years, of—

1 “(A) grants provided by the United States,
 2 a State, or a political subdivision of a State for
 3 use in connection with the project, and

4 “(B) the amount of any other credit allow-
 5 able with respect to any property which is part
 6 of the project, and

7 “(2) the denominator of which is the aggregate
 8 amount of additions to the capital account for the
 9 project for the taxable year and all prior taxable
 10 years. The amounts under the preceding sentence
 11 for any taxable year shall be determined as of the
 12 close of the taxable year.

13 “(c) QUALIFIED WASTE COAL.—

14 “(1) IN GENERAL.—For purposes of this sec-
 15 tion, the term ‘qualified waste coal’ means coal cer-
 16 tified by the Secretary to be waste (as defined in
 17 paragraphs (1) through (6) of section 292.202 of
 18 title 18, Code of Federal Regulations (as in effect on
 19 the date of the enactment of this section)).

20 “(2) CERTIFICATION PROCESS.—For purposes
 21 of paragraph (1), coal may not be certified as waste
 22 coal unless application therefor is submitted before
 23 the end of the 6-month period beginning on the date
 24 of the enactment of this section to the Secretary.

1 “(d) ELIGIBLE FACILITY.—For purposes of this sec-
2 tion—

3 “(1) IN GENERAL.—The term ‘eligible facility’
4 means a facility—

5 “(A) whose heat input is not less than 75
6 percent from qualified waste coal, and

7 “(B) which, as of the date on which the
8 Secretary determines by private letter ruling
9 that the taxpayer is eligible for the allowance of
10 the credit under this section, has under its con-
11 trol, by ownership or lease, not less than a 15-
12 year supply of qualified waste coal, and

13 “(C) which is placed in service not more
14 than 42 months after the month in which the
15 taxpayer receives the private letter ruling re-
16 ferred to in subparagraph (B).

17 “(2) PRIVATE LETTER RULING.—For purposes
18 of paragraph (1)(B), a private letter ruling shall not
19 be taken into account unless the request therefor is
20 submitted to the Secretary within 30 days after the
21 date on which the taxpayer receives the certification
22 required by subsection (b).

23 “(e) OTHER DEFINITION AND APPLICABLE
24 RULES.—For purposes of this section—

1 “(1) HEAT CONTENT.—Heat content shall be
2 determined on an ‘as received’ basis.

3 “(2) APPLICABLE RULES.—Rules similar to the
4 rules of section 45(d) (other than paragraph (2))
5 shall apply.

6 “(3) FORCE MAJEURE.—Performance time re-
7 quirements specified in this section may be sus-
8 pended by the Secretary for reasons beyond the con-
9 trol of the taxpayer when the Secretary is so re-
10 quested to extend deadlines by the taxpayer as long
11 as the taxpayer makes such request within 72 hours
12 of determining such event has occurred. Such events
13 include Acts of God and third party actions causing
14 delay.

15 “(f) SPECIAL ANNUAL APPLICATION.—Notwith-
16 standing any other provision of this title, no amount shall
17 be allowed as a credit for a taxable year under subsection
18 (a) until after the taxpayer submits an application for
19 such credit to the Secretary.

20 “(g) CREDIT MAY BE TRANSFERRED.—Nothing in
21 any law or rule of law shall be construed to limit the trans-
22 ferability of the credit allowed by this section through sale
23 and repurchase agreements.”.

24 (b) CREDIT MADE PART OF GENERAL BUSINESS
25 CREDIT.—Subsection (b) of section 38 of such Code (re-

1 lating to current year business credit) is amended by strik-
 2 ing “plus” at the end of paragraph (14), by striking the
 3 period at the end of paragraph (15) and inserting “, plus”,
 4 and by adding at the end thereof the following new para-
 5 graph:

6 “(16) the waste coal energy production per ton
 7 credit determined under section 45G.”.

8 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
 9 such Code (relating to certain expenses for which credits
 10 are allowable) is amended by adding at the end thereof
 11 the following new subsection:

12 “(d) WASTE COAL ENERGY PRODUCTION PER TON
 13 CREDIT.—No deduction shall be allowed for that portion
 14 of expenses incurred by the taxpayer to purchase qualified
 15 waste coal (excluding costs of transportation, handling,
 16 and preparation that may be included in the purchase
 17 price) otherwise allowable as a deduction for the taxable
 18 year which is equal to the amount of the credit determined
 19 for such taxable year under section 45G.”.

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

23 “(14) NO CARRYBACK OF WASTE COAL ENERGY
 24 PRODUCTION PER TON CREDIT BEFORE EFFECTIVE
 25 DATE.—No portion of the unused business credit for

1 any taxable year which is attributable to the credit
2 determined under section 45G may be carried back
3 to any taxable year ending before January 1,
4 2004.”.

5 (e) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 of such Code is amended by inserting after the item relat-
8 ing to section 45F the following new item:

 “Sec. 45G. Energy produced from waste coal.”.

9 (f) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years ending after De-
11 cember 31, 2003.

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