

108TH CONGRESS  
2D SESSION

# H. R. 4921

To amend the Internal Revenue Code of 1986 to provide incentives for  
the conservation of water.

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IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Ms. BERKLEY introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide  
incentives for the conservation of water.

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 “Water Conservation  
5 Incentive Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) a severe to extreme drought affected ap-  
9 proximately 15 percent of the contiguous United  
10 States as of the end of April 2004,

1           (2) about 32 percent of the contiguous United  
2       States fell in the moderate to extreme drought cat-  
3       egories at the end of April 2004,

4           (3) the Colorado River system is facing the  
5       worst drought on record,

6           (4) the drought throughout the western United  
7       States could persist for up to another 30 years,

8           (5) growing populations and changing values  
9       have increased demands on water supplies and river  
10      systems, resulting in water use and management  
11      conflicts throughout the country, particularly in the  
12      West, where the population is expected to increase  
13      at least 30 percent in the next 20–25 years, and

14          (6) unless highly efficient water usage practices  
15      can be developed and maintained in the West, it will  
16      not be possible to provide the water needed to sus-  
17      tain western ecosystems, as well as population  
18      growth.

19 **SEC. 3. REFUNDABLE CREDIT FOR RESIDENTIAL WATER**  
20 **CONSERVATION.**

21       (a) IN GENERAL.—Subpart C of part IV of sub-  
22      chapter A of chapter 1 of the Internal Revenue Code of  
23      1986 (relating to refundable credits) is amended by redes-  
24      ignating section 36 as section 37 and by inserting after  
25      section 35 the following new section:

1 **“SEC. 36. RESIDENTIAL WATER CONSERVATION.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
3 dividual, there shall be allowed as a credit against the tax  
4 imposed by this chapter for the taxable year an amount  
5 equal to the qualified water conservation expenditures  
6 made by the taxpayer during the taxable year.

7 “(b) LIMITATIONS.—

8 “(1) MAXIMUM CREDIT.—The credit allowed  
9 under subsection (a) for a taxable year shall not ex-  
10 ceed \$1,000.

11 “(2) MINIMUM EXPENDITURES.—If the aggre-  
12 gate qualified water conservation expenditures made  
13 by the taxpayer during a taxable year is less than  
14 \$50, the amount allowed as a credit under sub-  
15 section (a) for the taxable year shall be zero.

16 “(3) PROPERTY STANDARDS.—No credit shall  
17 be allowed under this section for an item of property  
18 unless—

19 “(A) the original use of such property com-  
20 mences with the taxpayer,

21 “(B) such property reasonably can be ex-  
22 pected to remain in use for at least 5 years,  
23 and

24 “(C) such property is installed on or in  
25 connection with a dwelling unit located in the  
26 United States and used as the principal resi-

1           dence (within the meaning of section 121) of  
2           the taxpayer.

3           “(c) QUALIFIED WATER CONSERVATION EXPENDI-  
4   TURES.—For purposes of this section—

5           “(1) IN GENERAL.—The term ‘qualified water  
6           conservation expenditure’ means the amount paid  
7           for qualified water conservation property.

8           “(2) QUALIFIED WATER CONSERVATION PROP-  
9           ERTY.—The term ‘qualified water conservation prop-  
10          erty’ means—

11           “(A) smart dual or multi program irriga-  
12          tion clock that allows the watering of plant and  
13          grass areas separately and which is capable of  
14          adjusting the watering schedule based on the  
15          watering needs of the landscape being watered,

16           “(B) water efficient landscaping, includ-  
17          ing—

18           “(i) xeriscape (which is low-water use  
19          native and non-native plants and grasses),  
20          and

21           “(ii) artificial turf,

22           “(C) low-flow shower heads that use no  
23          more than 3 gallons of water per minute,

24           “(D) ultra low-flush toilets that use no  
25          more than 1.6 gallons of water per flush,

1           “(E) dual flush toilets that allow the con-  
2           sumer to select either a short flush of 0.80 gal-  
3           lons of water or a long flush of 1.6 gallons of  
4           water,

5           “(F) drip irrigation,

6           “(G) high-efficiency clothes washing ma-  
7           chine, and

8           “(H) any other property of a type specified  
9           by the Secretary.

10          “(3) LIMITATION ON TYPES OF PROPERTY  
11          SPECIFIED BY SECRETARY.—The Secretary may  
12          only specify a type of property for purposes of para-  
13          graph (2)(H) if—

14               “(A) the principal use of such property is  
15               to reduce the amount of water consumed in any  
16               existing residential process,

17               “(B) such property or the use of such  
18               property is not harmful to persons or the envi-  
19               ronment and does not induce the use of any  
20               other item which may be hazardous to persons  
21               or the environment, and

22               “(C) the Secretary determines that the  
23               credit allowed under subsection (a) with respect  
24               to such property, together with any other Fed-

1           eral subsidy of such property, is not superfluous  
2           and inefficient.

3           “(d) SPECIAL RULES.—For purposes of this sec-  
4   tion—

5           “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
6   CUPANCY.—In the case of any dwelling unit which is  
7   jointly occupied and used during any calendar year  
8   as a residence by 2 or more individuals, the fol-  
9   lowing rules shall apply:

10           “(A) The amount of the credit allowable  
11           under subsection (a) by reason of expenditures  
12           made during such calendar year by any of such  
13           individuals with respect to such dwelling unit  
14           shall be determined by treating all of such indi-  
15           viduals as 1 taxpayer whose taxable year is  
16           such calendar year.

17           “(B) There shall be allowable, with respect  
18           to such expenditures to each of such individ-  
19           uals, a credit under subsection (a) for the tax-  
20           able year in which such calendar year ends in  
21           an amount which bears the same ratio to the  
22           amount determined under subparagraph (A) as  
23           the amount of such expenditures made by such  
24           individual during such calendar year bears to

1 the aggregate of such expenditures made by all  
2 of such individuals during such calendar year.

3 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
4 HOUSING CORPORATION.—In the case of an indi-  
5 vidual who is a tenant-stockholder (as defined in sec-  
6 tion 216) in a cooperative housing corporation (as  
7 defined in such section), such individual shall be  
8 treated as having made the individual’s tenant-stock-  
9 holder’s proportionate share (as defined in section  
10 216(b)(3)) of any expenditures of such corporation.

11 “(3) CONDOMINIUMS.—

12 “(A) IN GENERAL.—In the case of an indi-  
13 vidual who is a member of a condominium man-  
14 agement association with respect to a condo-  
15 minium which the individual owns, such indi-  
16 vidual shall be treated as having made the indi-  
17 vidual’s proportionate share of any expenditures  
18 of such association.

19 “(B) CONDOMINIUM MANAGEMENT ASSO-  
20 CIATION.—For purposes of this paragraph, the  
21 term ‘condominium management association’  
22 means an organization which meets the require-  
23 ments of paragraph (1) of section 528(c) (other  
24 than subparagraph (E) thereof) with respect to

1 a condominium project substantially all of the  
2 units of which are used as residences.

3 “(4) ALLOCATION IN CERTAIN CASES.—If less  
4 than 80 percent of the use of an item is for nonbusi-  
5 ness purposes, only that portion of the expenditures  
6 for such item which is properly allocable to use for  
7 nonbusiness purposes shall be taken into account.

8 “(5) WHEN EXPENDITURE MADE; AMOUNT OF  
9 EXPENDITURE.—

10 “(A) IN GENERAL.—Except as provided in  
11 subparagraph (B), an expenditure with respect  
12 to an item shall be treated as made when the  
13 original installation of the item is completed.

14 “(B) EXPENDITURES PART OF BUILDING  
15 CONSTRUCTION.—In the case of an expenditure  
16 in connection with the construction or recon-  
17 struction of a structure, such expenditure shall  
18 be treated as made when the original use of the  
19 constructed or reconstructed structure by the  
20 taxpayer begins.

21 “(C) AMOUNT.—The amount of any ex-  
22 penditure shall be the cost thereof.

23 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
24 ERGY FINANCING.—For purposes of determining the  
25 amount of expenditures made by any individual with



1       respect to any dwelling unit, there shall not be taken  
 2       into account expenditures which are made from sub-  
 3       sidized energy financing (as defined in section  
 4       48(a)(4)(C)).

5       “(e) BASIS ADJUSTMENTS.—For purposes of this  
 6 subtitle, if a credit is allowed under this section for any  
 7 expenditure with respect to any property, the increase in  
 8 the basis of such property which would (but for this sub-  
 9 section) result from such expenditure shall be reduced by  
 10 the amount of the credit so allowed.”.

11       (b) CONFORMING AMENDMENTS.—

12               (1) Section 1016(a) of such Code is amended  
 13       by striking “and” at the end of paragraph (27), by  
 14       striking the period at the end of paragraph (28) and  
 15       inserting “, and”, and by adding at the end the fol-  
 16       lowing new paragraph:

17               “(29) to the extent provided in section 36(e), in  
 18       the case of amounts with respect to which a credit  
 19       has been allowed under section 36.”.

20               (2) The table of sections for subpart A of part  
 21       IV of subchapter A of chapter 1 of such Code is  
 22       amended by striking the item relating to section 36  
 23       and inserting after the item relating to section 35  
 24       the following new items:

“Sec. 36. Residential water conservation.

“Sec. 37. Overpayments of tax.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to property placed in service after  
 3 December 31, 2003.

4 **SEC. 4. CREDIT FOR WATER CONSERVATION.**

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 adding at the end the following new section:

9 **“SEC. 45G. COMMERCIAL WATER CONSERVATION CREDIT.**

10       “(a) IN GENERAL.—For purposes of section 38, in  
 11 the case of a small employer, the credit determined under  
 12 this section for the taxable year is an amount equal to  
 13 10 percent of the aggregate adjusted bases of all qualified  
 14 water conservation property installed in or in connection  
 15 with the principal place of business (within the meaning  
 16 of section 280A(c)(1)) of the taxpayer located in the  
 17 United States.

18       “(b) DEFINITIONS.—For purposes of this section—

19               “(1) SMALL EMPLOYER.—

20                       “(A) IN GENERAL.—The term ‘small em-  
 21                       ployer’ means, with respect to any taxable year,  
 22                       any employer if such employer employed an av-  
 23                       erage of 100 or fewer employees on business  
 24                       days during either of the 2 preceding calendar  
 25                       years. For purposes of the preceding sentence,

1 a preceding calendar year may be taken into ac-  
2 count only if the employer was in existence  
3 throughout such year.

4 “(B) EMPLOYERS NOT IN EXISTENCE IN  
5 PRECEDING YEAR.—In the case of an employer  
6 which was not in existence throughout the 1st  
7 preceding taxable year, the determination under  
8 subparagraph (A) shall be based on the average  
9 number of employees that it is reasonably ex-  
10 pected such employer will employ on business  
11 days in the current taxable year.

12 “(C) SPECIAL RULES.—

13 “(i) CONTROLLED GROUPS.—For pur-  
14 poses of this paragraph, all persons treated  
15 as a single employer under subsection (b),  
16 (c), (m), or (o) of section 414 shall be  
17 treated as 1 employer.

18 “(ii) PREDECESSORS.—Any reference  
19 in this paragraph to an employer shall in-  
20 clude a reference to any predecessor of  
21 such employer.

22 “(2) QUALIFIED WATER CONSERVATION PROP-  
23 erty.—The term ‘qualified water conservation prop-  
24 erty’ has the meaning given to such term by section  
25 36(c)(2).

1       “(c) SPECIAL RULES.—For purposes of this sec-  
2 tion—

3               “(1) IN GENERAL.—Rules similar to the rules  
4 of section 36(d) (other than paragraph (4) thereof)  
5 shall apply for purposes of this section.

6               “(2) COORDINATION WITH CERTAIN CREDITS.—

7                       “(A) The basis of any property referred to  
8 in subsection (a) shall be reduced by that por-  
9 tion of the basis of any property which is attrib-  
10 utable to qualified rehabilitation expenditures  
11 (as defined in section 47(c)(2)) or to the energy  
12 percentage of energy property (as determined  
13 under section 48(a)).

14                      “(B) Expenditures taken into account  
15 under section 47 or 48(a) shall not be taken  
16 into account under this section.

17               “(3) DENIAL OF DOUBLE BENEFIT.—No deduc-  
18 tion or credit shall be allowed under this chapter for  
19 any amount taken into account in determining the  
20 credit under this section.

21               “(4) ELECTION NOT TO CLAIM CREDIT.—This  
22 section shall not apply to a taxpayer for any taxable  
23 year if such taxpayer elects to have this section not  
24 apply for such taxable year.

1       “(d) BASIS ADJUSTMENT.—For purposes of this sub-  
2 title, if a credit is determined under this section for any  
3 expenditure with respect to any property, the increase in  
4 the basis of such property which would (but for this sub-  
5 section) result from such expenditure shall be reduced by  
6 the amount of the credit so determined.”.

7       (b) CREDIT MADE PART OF GENERAL BUSINESS  
8 CREDIT.—Section 38(b) of such Code (relating to current  
9 year business credit) is amended by striking “plus” at the  
10 end of paragraph (14), by striking the period at the end  
11 of paragraph (15) and inserting “, plus”, and by adding  
12 at the end the following new paragraph:

13               “(16) the commercial water conservation credit  
14 determined under section 45G(a).”.

15       (c) BASIS ADJUSTMENT.—Subsection (a) of section  
16 1016 of such Code is amended by striking “and” at the  
17 end of paragraph (27), by striking the period at the end  
18 of paragraph (28) and inserting “, and”, and by adding  
19 at the end the following new paragraph:

20               “(29) to the extent provided in section 45G(d),  
21 in the case of amounts with respect to which a credit  
22 has been allowed under section 45G.”.

23       (d) LIMITATION ON CARRYBACK.—Subsection (d) of  
24 section 39 of such Code is amended to read as follows:

1       “(d) NO CARRYBACK OF COMMERCIAL WATER CON-  
2       SERVATION CREDIT BEFORE JANUARY 1, 2004.—No por-  
3       tion of the unused business credit for any taxable year  
4       which is attributable to the commercial water conservation  
5       credit determined under section 45G may be carried back  
6       to a taxable year beginning before January 1, 2004.”.

7       (e) CLERICAL AMENDMENT.—The table of sections  
8       for subpart D of part IV of subchapter A of chapter 1  
9       of such Code is amended by adding at the end the fol-  
10      lowing new item:

“45G. Commercial water conservation credit.”.

11      (f) EFFECTIVE DATE.—The amendments made by  
12      this section shall apply to property placed in service after  
13      December 31, 2003.

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