

108TH CONGRESS
1ST SESSION

H. R. 991

To amend the Internal Revenue Code of 1986 to expand the renewable resources production tax credit to include additional forms of renewable energy, and to expand the investment tax credit to include equipment used to produce electricity from renewable resources.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. HUNTER (for himself and Mr. UDALL of Colorado) 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 expand the renewable resources production tax credit to include additional forms of renewable energy, and to expand the investment tax credit to include equipment used to produce electricity from renewable resources.

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 “Renewable Fuel Equity
5 Act”.

1 **SEC. 2. EXPANSION OF RENEWABLE RESOURCES CREDIT.**

2 (a) IN GENERAL.—Section 45(c)(1) of the Internal
3 Revenue Code of 1986 (relating to qualified energy re-
4 sources) is amended by striking “and” at the end of sub-
5 paragraph (B), by striking the period at the end of the
6 subparagraph (C) and inserting a comma, and by adding
7 at the end the following new subparagraphs:

8 “(D) geothermal energy,

9 “(E) solar energy,

10 “(F) incremental hydropower, and

11 “(G) biomass (other than closed-loop bio-
12 mass).”

13 (b) EXTENSION AND MODIFICATION OF PLACED-IN-
14 SERVICE RULES WITH RESPECT TO BIOMASS FACILI-
15 TIES.—

16 (1) IN GENERAL.—Paragraph (3) of section
17 45(c) of the Internal Revenue Code of 1986 (defin-
18 ing qualified facility) is amended—

19 (A) by striking subparagraph (B) and in-
20 serting the following new subparagraph:

21 “(B) CLOSED-LOOP BIOMASS FACILITY.—

22 In the case of a facility using closed-loop bio-
23 mass to produce electricity, the term ‘qualified
24 facility’ means any facility—

1 “(i) owned by the taxpayer which is
2 originally placed in service after December
3 31, 1992, and before January 1, 2009, or

4 “(ii) owned by the taxpayer which is
5 originally placed in service on or before
6 December 31, 1992, and modified to use
7 closed-loop biomass to co-fire with coal be-
8 fore January 1, 2009.”,

9 (B) by striking “2004” in subparagraph
10 (C) and inserting “2009”, and

11 (C) by adding at the end the following new
12 subparagraph:

13 “(D) BIOMASS FACILITY.—In the case of a
14 facility using biomass (other than closed-loop
15 biomass) to produce electricity, the term ‘quali-
16 fied facility’ means any facility owned by the
17 taxpayer which is originally placed in service be-
18 fore January 1, 2009.”.

19 (2) DEFINITION.—Subsection (c) of section 45
20 of such Code (relating to definitions) is amended by
21 adding at the end the following new paragraph:

22 “(5) BIOMASS.—The term ‘biomass’ means any
23 solid, nonhazardous, cellulosic waste material which
24 is segregated from other waste materials and which
25 is derived from—

1 “(A) any of the following forest-related re-
2 sources: mill residues, precommercial thinnings,
3 slash, and brush, but not including old-growth
4 timber,

5 “(B) solid wood waste materials, including
6 waste pallets, crates, dunnage, manufacturing
7 and construction wood wastes (other than pres-
8 sure-treated, chemically-treated, or painted
9 wood wastes), and landscape or right-of-way
10 tree trimmings, but not including municipal
11 solid waste (garbage), gas derived from the bio-
12 degradation of solid waste, or paper that is
13 commonly recycled, or

14 “(C) agriculture sources, including orchard
15 tree crops, vineyard, grain, legumes, sugar, and
16 other crop by-products or residues.”.

17 (3) SPECIAL RULES.—Subsection (d) of section
18 45 of such Code (relating to definitions and special
19 rules) is amended by adding at the end the following
20 new paragraph:

21 “(8) SPECIAL RULES WITH RESPECT TO BIO-
22 MASS.—In the case of a qualified facility described
23 in subparagraph (B)(ii) or (D) of subsection
24 (c)(3)—

1 “(A) the 10-year period referred to in sub-
2 section (a) shall be treated as beginning no ear-
3 lier than the date of the enactment of this para-
4 graph,

5 “(B) subsection (b)(3) shall not apply to
6 any such facility originally placed in service be-
7 fore January 1, 1997, and

8 “(C) if such a facility is leased and the op-
9 erator thereof is the lessee, such lessee (and not
10 the owner) shall be treated for purposes of this
11 section as owning such facility.”

12 (c) QUALIFIED FACILITY TO INCLUDE GEO-
13 THERMAL, SOLAR ENERGY, AND INCREMENTAL HYDRO-
14 POWER FACILITY.—

15 (1) IN GENERAL.—Paragraph (3) of section
16 45(c) of such Code, as amended by subsection (b),
17 is amended by inserting after subparagraph (D) the
18 following new subparagraphs:

19 “(E) GEOTHERMAL FACILITY.—In the case
20 of a facility using geothermal energy to produce
21 electricity, the term ‘qualified facility’ means—

22 “(i) any facility owned by the tax-
23 payer which is originally placed in service
24 after December 31, 2003, or

1 “(ii) any facility owned by the tax-
2 payer which is originally placed in service
3 before January 1, 2004, but only to the ex-
4 tent of its incremental production.

5 If such a facility is leased and the operator
6 thereof is the lessee, such lessee (and not the
7 owner) shall be treated for purposes of this sec-
8 tion as owning such facility.

9 “(F) SOLAR ENERGY FACILITY.—In the
10 case of a facility using solar energy to produce
11 electricity, the term ‘qualified facility’ means—

12 “(i) any facility owned by the tax-
13 payer which is originally placed in service
14 after December 31, 2003, or

15 “(ii) any facility owned by the tax-
16 payer which is originally placed in service
17 before January 1, 2004, but only to the ex-
18 tent of its incremental production.

19 If such a facility is leased and the operator
20 thereof is the lessee, such lessee (and not the
21 owner) shall be treated for purposes of this sec-
22 tion as owning such facility.

23 “(G) INCREMENTAL HYDROPOWER FACIL-
24 ITY.—

1 “(i) IN GENERAL.—In the case of a
2 facility using incremental hydropower to
3 produce electricity, the term ‘qualified fa-
4 cility’ means any facility owned by the tax-
5 payer that achieves additional generation
6 from—

7 “(I) increased efficiency, or

8 “(II) additions of new capacity,
9 at a non-Federal hydroelectric project
10 originally placed in service before the date
11 of enactment of this subparagraph. Only
12 the incremental hydropower production of
13 such facility shall be taken into account
14 under subsection (a).

15 “(ii) INCREMENTAL HYDROPOWER
16 PRODUCTION.—For purposes of clause (i),
17 the term ‘incremental hydropower produc-
18 tion’ means for any taxable year an
19 amount equal to the percentage of total
20 kilowatt hours of electricity produced from
21 a hydropower facility described in clause
22 (i) attributable to efficiency improvements
23 or additions of capacity as determined
24 under clause (iii).

1 “(iii) DETERMINATION OF INCRE-
2 MENTAL HYDROPOWER PRODUCTION.—For
3 purposes of clause (i), incremental hydro-
4 power production for any hydropower facil-
5 ity for any taxable year shall be deter-
6 mined by establishing a percentage of aver-
7 age annual hydropower production at the
8 facility attributable to the efficiency im-
9 provements or additions of capacity using
10 the same water flow information used to
11 determine an historic average annual hy-
12 dropower production baseline for such fa-
13 cility. Such percentage and baseline shall
14 be certified by the Federal Energy Regu-
15 latory Commission. For purposes of the
16 preceding sentence, the determination of
17 incremental hydropower production shall
18 not be based on any operational changes at
19 such facility not directly associated with
20 the efficiency improvements or additions of
21 capacity.”

22 (2) SPECIAL RULE.—Subsection (d) of section
23 45 of such Code (relating to definitions and special
24 rules), as amended by subsection (b)(3), is amended
25 by adding at the end the following new paragraph:

1 “(9) DEFINITION AND SPECIAL RULE WITH RE-
2 SPECT TO INCREMENTAL GEOTHERMAL AND SOLAR
3 PRODUCTION.—For purposes of subparagraphs (E)
4 and (F) of paragraph (3)—

5 “(A) IN GENERAL.—The term ‘incremental
6 production’ means, with respect to any applica-
7 ble facility for any taxable year, the excess of—

8 “(i) the total kilowatt hours of elec-
9 tricity produced from such facility, over

10 “(ii) the average annual kilowatt
11 hours produced at such facility for five of
12 the previous seven calendar years prior to
13 the date of the enactment of this para-
14 graph after eliminating the highest and
15 lowest kilowatt hour production years in
16 such seven-year period.

17 “(B) SPECIAL RULE.—An applicable facil-
18 ity which was placed in service seven years or
19 longer prior to the date of the enactment of this
20 paragraph shall, commencing with the year of
21 such enactment, reduce the amount calculated
22 under subparagraph (A)(ii) each year, on a cu-
23 mulative basis, by the average decrease in an-
24 nual kilowatt hour production for the seven-
25 year period described in subparagraph (A)(ii)

1 with such cumulative sum not to exceed 30 per-
2 cent.

3 “(C) APPLICABLE FACILITY.—The term
4 ‘applicable facility’ means—

5 “(i) a facility described in subsection
6 (c)(3)(E)(ii), and

7 “(ii) a facility described in subsection
8 (c)(3)(F)(ii).”.

9 (d) COORDINATION WITH OTHER CREDITS.—Sub-
10 section (d) of section 45 of such Code (relating to defini-
11 tions and special rules), as amended by subsection (c)(2),
12 is amended by adding at the end the following:

13 “(10) COORDINATION WITH OTHER CREDITS.—
14 This section shall not apply to any qualified facility
15 with respect to which a credit under any other sec-
16 tion is allowed for the taxable year unless the tax-
17 payer elects to waive application of such credit to
18 such facility.”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to electricity sold after December
21 31, 2003.

1 **SEC. 3. EXPANSION OF INVESTMENT TAX CREDIT TO IN-**
2 **CLUDE EQUIPMENT USED TO PRODUCE**
3 **ELECTRICITY FROM CERTAIN RENEWABLE**
4 **RESOURCES.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 48(a)(3) of the Internal Revenue Code of 1986 (relating
7 to energy credit reforestation credit) is amended by strik-
8 ing “or” at the end of clause (i), inserting “or” at the
9 end of clause (ii), and adding at the end the following new
10 clause:

11 “(iii) equipment used to produce elec-
12 tricity from a qualified facility (as defined
13 in section 45).”.

14 (b) INCREASED CREDIT FOR CERTAIN EQUIP-
15 MENT.—Paragraph (2) of section 48(a) is amended—

16 (1) by redesignating subparagraph (B) as sub-
17 paragraph (C),

18 (2) in subparagraph (A), by striking “The” and
19 inserting “Except as provided in subparagraph (B),
20 the”, and

21 (3) by inserting after subparagraph (A) the fol-
22 lowing new subparagraph:

23 “(B) INCREASED PERCENTAGE FOR CER-
24 TAIN EQUIPMENT.—In the case of energy prop-
25 erty having a total installed electrical gener-
26 ating capacity of less than 1 megawatt and

1 placed in service before January 1, 2009, the
2 energy percentage is 20 percent.”.

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

○