

108TH CONGRESS  
1ST SESSION

# S. 1476

To amend the Internal Revenue Code of 1986 to encourage investment in facilities using wind to produce electricity, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 21), 2003

Mr. HARKIN (for himself and Mr. DAYTON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to encourage investment in facilities using wind to produce electricity, 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 “Wind Power Tax In-  
5       centives Act of 2003”.

### 6   **SEC. 2. OFFSET OF PASSIVE ACTIVITY LOSSES AND CRED-** 7                               **ITS OF AN ELIGIBLE TAXPAYER FROM WIND** 8                               **ENERGY FACILITIES.**

9       (a) IN GENERAL.—Section 469 of the Internal Rev-  
10       enue Code of 1986 (relating to passive activity losses and

1 credits limited) is amended by redesignating subsections  
 2 (l) and (m) as subsections (m) and (n) and by inserting  
 3 after subsection (k) the following new subsection:

4 “(l) OFFSET OF PASSIVE ACTIVITY LOSSES AND  
 5 CREDITS FROM WIND ENERGY FACILITIES.—

6 “(1) IN GENERAL.—Subsection (a) shall not  
 7 apply to the portion of the passive activity loss, or  
 8 the deduction equivalent (within the meaning of sub-  
 9 section (j)(5)) of the portion of the passive activity  
 10 credit, for any taxable year which is attributable to  
 11 all interests of an eligible taxpayer in qualified facili-  
 12 ties described in section 45(c)(3)(A).

13 “(2) ELIGIBLE TAXPAYER.—For purposes of  
 14 this subsection—

15 “(A) IN GENERAL.—The term ‘eligible tax-  
 16 payer’ means, with respect to any taxable year,  
 17 a taxpayer the adjusted gross income (taxable  
 18 income in the case of a corporation) of which  
 19 does not exceed \$1,000,000.

20 “(B) RULES FOR COMPUTING ADJUSTED  
 21 GROSS INCOME.—Adjusted gross income shall  
 22 be computed in the same manner as under sub-  
 23 section (i)(3)(F).

24 “(C) AGGREGATION RULES.—All persons  
 25 treated as a single employer under subsection

1 (a) or (b) of section 52 shall be treated as a  
 2 single taxpayer for purposes of this paragraph.

3 “(D) PASS-THRU ENTITIES.—In the case  
 4 of a pass-thru entity, this paragraph shall be  
 5 applied at the level of the person to which the  
 6 credit is allocated by the entity.”

7 (b) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to facilities placed in service after  
 9 the date of the enactment of this Act.

10 **SEC. 3. CREDIT FOR WIND ENERGY FACILITIES OF AN ELI-**  
 11 **GIBLE TAXPAYER ALLOWED AGAINST MIN-**  
 12 **IMUM TAX.**

13 (a) IN GENERAL.—Section 38(c) of the Internal Rev-  
 14 enue Code of 1986 (relating to limitation based on amount  
 15 of tax) is amended by redesignating paragraph (4) as  
 16 paragraph (5) and by inserting after paragraph (3) the  
 17 following new paragraph:

18 “(4) SPECIAL RULES FOR WIND ENERGY CRED-  
 19 IT.—

20 “(A) IN GENERAL.—In the case of the  
 21 wind energy credit of an eligible taxpayer—

22 “(i) this section and section 39 shall  
 23 be applied separately with respect to such  
 24 credit, and

1 “(ii) in applying paragraph (1) to the  
2 credit—

3 “(I) the tentative minimum tax  
4 shall be treated as being zero, and

5 “(II) the limitation under para-  
6 graph (1) (as modified by subclause  
7 (I)) shall be reduced by the credit al-  
8 lowed under subsection (a) for the  
9 taxable year (other than the wind en-  
10 ergy credit).

11 “(B) WIND ENERGY CREDIT.—For pur-  
12 poses of this subsection, the term ‘wind energy  
13 credit’ means the portion of the renewable elec-  
14 tric production credit under section 45 deter-  
15 mined with respect to a facility using wind to  
16 produce electricity.

17 “(C) ELIGIBLE TAXPAYER.—For purposes  
18 of this paragraph, the term ‘eligible taxpayer’  
19 has the meaning given such term by section  
20 469(l)(2).”

21 (b) CONFORMING AMENDMENTS.—Paragraphs  
22 (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) of such  
23 Code are each amended by inserting “or wind energy cred-  
24 it” after “employee credit”.

1       (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to taxable years ending after the  
 3 date of the enactment of this Act.

4   **SEC. 4. APPLICATION OF CREDIT TO COOPERATIVES.**

5       (a) IN GENERAL.—Section 45(d) of the Internal Rev-  
 6 enue Code of 1986 (relating to definitions and special  
 7 rules) is amended by adding at the end the following new  
 8 paragraph:

9               “(8) ALLOCATION OF CREDIT TO SHARE-  
 10       HOLDERS OF COOPERATIVE.—

11               “(A) ELECTION TO ALLOCATE.—

12                       “(i) IN GENERAL.—In the case of a  
 13       cooperative organization described in sec-  
 14       tion 1381(a), any portion of the credit de-  
 15       termined under subsection (a) for the tax-  
 16       able year may, at the election of the orga-  
 17       nization, be apportioned pro rata among  
 18       shareholders of the organization on the  
 19       basis of the capital contributions of the  
 20       shareholders to the organization.

21                       “(ii) FORM AND EFFECT OF ELEC-  
 22       TION.—An election under clause (i) for any  
 23       taxable year shall be made on a timely  
 24       filed return for such year. Such election,

1           once made, shall be irrevocable for such  
2           taxable year.

3           “(B) TREATMENT OF ORGANIZATIONS AND  
4           PATRONS.—The amount of the credit appor-  
5           tioned to any shareholders under subparagraph  
6           (A)—

7                   “(i) shall not be included in the  
8                   amount determined under subsection (a)  
9                   with respect to the organization for the  
10                  taxable year, and

11                   “(ii) shall be included in the amount  
12                   determined under subsection (a) for the  
13                   taxable year of the shareholder with or  
14                   within which the taxable year of the orga-  
15                   nization ends.

16           “(C) SPECIAL RULES FOR DECREASE IN  
17           CREDITS FOR TAXABLE YEAR.—If the amount  
18           of the credit of a cooperative organization de-  
19           termined under subsection (a) for a taxable  
20           year is less than the amount of such credit  
21           shown on the return of the cooperative organi-  
22           zation for such year, an amount equal to the  
23           excess of—

24                   “(i) such reduction, over

1                   “(ii) the amount not apportioned to  
2                   such shareholders under subparagraph (A)  
3                   for the taxable year,  
4                   shall be treated as an increase in tax imposed  
5                   by this chapter on the organization. Such in-  
6                   crease shall not be treated as tax imposed by  
7                   this chapter for purposes of determining the  
8                   amount of any credit under this subpart or sub-  
9                   part A, B, E, or G.”.

10       (b) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years ending after the  
12 date of the enactment of this Act.

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