

108TH CONGRESS  
1ST SESSION

# S. 597

To amend the Internal Revenue Code of 1986 to provide energy tax incentives.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. DOMENICI, and Mr. BINGAMAN) 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 provide energy tax incentives.

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; ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Energy Tax Incentives Act of 2003”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this division an  
8       amendment or repeal is expressed in terms of an amend-  
9       ment to, or repeal of, a section or other provision, the ref-

1 erence shall be considered to be made to a section or other  
 2 provision of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for  
 4 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—EXTENSION AND MODIFICATION OF RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

- Sec. 101. Three-year extension of credit for producing electricity from wind and poultry waste.
- Sec. 102. Credit for electricity produced from biomass.
- Sec. 103. Credit for electricity produced from swine and bovine waste nutrients, geothermal energy, and solar energy.
- Sec. 104. Treatment of persons not able to use entire credit.
- Sec. 105. Credit for electricity produced from small irrigation power.
- Sec. 106. Credit for electricity produced from municipal biosolids and recycled sludge.

#### TITLE II—ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

- Sec. 201. Alternative motor vehicle credit.
- Sec. 202. Modification of credit for qualified electric vehicles.
- Sec. 203. Credit for installation of alternative fueling stations.
- Sec. 204. Credit for retail sale of alternative fuels as motor vehicle fuel.
- Sec. 205. Small ethanol producer credit.
- Sec. 206. All alcohol fuels taxes transferred to Highway Trust Fund.
- Sec. 207. Increased flexibility in alcohol fuels tax credit.
- Sec. 208. Incentives for biodiesel.
- Sec. 209. Credit for taxpayers owning commercial power takeoff vehicles.

#### TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

- Sec. 301. Credit for construction of new energy efficient home.
- Sec. 302. Credit for energy efficient appliances.
- Sec. 303. Credit for residential energy efficient property.
- Sec. 304. Credit for business installation of qualified fuel cells and stationary microturbine power plants.
- Sec. 305. Energy efficient commercial buildings deduction.
- Sec. 306. Allowance of deduction for qualified new or retrofitted energy management devices.
- Sec. 307. Three-year applicable recovery period for depreciation of qualified energy management devices.
- Sec. 308. Energy credit for combined heat and power system property.
- Sec. 309. Credit for energy efficiency improvements to existing homes.
- Sec. 310. Allowance of deduction for qualified new or retrofitted water submetering devices.
- Sec. 311. Three-year applicable recovery period for depreciation of qualified water submetering devices.

## TITLE IV—CLEAN COAL INCENTIVES

## Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

Sec. 401. Credit for production from a qualifying clean coal technology unit.

## Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

Sec. 411. Credit for investment in qualifying advanced clean coal technology.

Sec. 412. Credit for production from a qualifying advanced clean coal technology unit.

## Subtitle C—Treatment of Persons Not Able To Use Entire Credit

Sec. 421. Treatment of persons not able to use entire credit.

## TITLE V—OIL AND GAS PROVISIONS

Sec. 501. Oil and gas from marginal wells.

Sec. 502. Natural gas gathering lines treated as 7-year property.

Sec. 503. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.

Sec. 504. Environmental tax credit.

Sec. 505. Determination of small refiner exception to oil depletion deduction.

Sec. 506. Marginal production income limit extension.

Sec. 507. Amortization of geological and geophysical expenditures.

Sec. 508. Amortization of delay rental payments.

Sec. 509. Study of coal bed methane.

Sec. 510. Extension and modification of credit for producing fuel from a non-conventional source.

Sec. 511. Natural gas distribution lines treated as 15-year property.

## TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

Sec. 601. Ongoing study and reports regarding tax issues resulting from future restructuring decisions.

Sec. 602. Modifications to special rules for nuclear decommissioning costs.

Sec. 603. Treatment of certain income of cooperatives.

Sec. 604. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.

Sec. 605. Treatment of certain development income of cooperatives.

## TITLE VII—ADDITIONAL PROVISIONS

Sec. 701. Extension of accelerated depreciation and wage credit benefits on Indian reservations.

Sec. 702. Study of effectiveness of certain provisions by GAO.

Sec. 703. Credit for production of Alaska natural gas.

Sec. 704. Sale of gasoline and diesel fuel at duty-free sales enterprises.

Sec. 705. Clarification of excise tax exemptions for agricultural aerial applicators.

Sec. 706. Modification of rural airport definition.

Sec. 707. Exemption from ticket taxes for transportation provided by seaplanes.

1 **TITLE I—EXTENSION AND MODI-**  
 2 **FICATION OF RENEWABLE**  
 3 **ELECTRICITY PRODUCTION**  
 4 **TAX CREDIT**

5 **SEC. 101. THREE-YEAR EXTENSION OF CREDIT FOR PRO-**  
 6 **DUCING ELECTRICITY FROM WIND AND**  
 7 **POULTRY WASTE.**

8 (a) IN GENERAL.—Subparagraphs (A) and (C) of  
 9 section 45(c)(3) (relating to qualified facility), as amended  
 10 by section 603(a) of the Job Creation and Worker Assist-  
 11 ance Act of 2002, are each amended by striking “January  
 12 1, 2004” and inserting “January 1, 2007”.

13 (b) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to electricity sold after the date  
 15 of the enactment of this Act, in taxable years ending after  
 16 such date.

17 **SEC. 102. CREDIT FOR ELECTRICITY PRODUCED FROM BIO-**  
 18 **MASS.**

19 (a) EXTENSION AND MODIFICATION OF PLACED-IN-  
 20 SERVICE RULES.—Paragraph (3) of section 45(c) is  
 21 amended—

22 (1) by striking subparagraph (B) and inserting  
 23 the following new subparagraph:

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

1 “(i) IN GENERAL.—In the case of a  
2 facility using closed-loop biomass to  
3 produce electricity, the term ‘qualified fa-  
4 cility’ means any facility—

5 “(I) owned by the taxpayer which  
6 is originally placed in service after De-  
7 cember 31, 1992, and before January  
8 1, 2007, or

9 “(II) owned by the taxpayer  
10 which is originally placed in service  
11 before January 1, 1993, and modified  
12 to use closed-loop biomass to co-fire  
13 with coal or other biomass before Jan-  
14 uary 1, 2007, as approved under the  
15 Biomass Power for Rural Develop-  
16 ment Programs or under a pilot  
17 project of the Commodity Credit Cor-  
18 poration as described in 65 Fed. Reg.  
19 63052.

20 “(ii) SPECIAL RULES.—In the case of  
21 a qualified facility described in clause  
22 (i)(II)—

23 “(I) the 10-year period referred  
24 to in subsection (a) shall be treated as

1 beginning no earlier than the date of  
 2 the enactment of this subclause, and  
 3 “(II) if the owner of such facility  
 4 is not the producer of the electricity,  
 5 the person eligible for the credit allow-  
 6 able under subsection (a) is the lessee  
 7 or the operator of such facility.”, and

8 (2) by adding at the end the following new sub-  
 9 paragraph:

10 “(D) BIOMASS FACILITY.—

11 “(i) IN GENERAL.—In the case of a  
 12 facility using biomass (other than closed-  
 13 loop biomass) to produce electricity, the  
 14 term ‘qualified facility’ means any facility  
 15 owned by the taxpayer which is originally  
 16 placed in service before January 1, 2005.

17 “(ii) SPECIAL RULE FOR  
 18 POSTEFFECTIVE DATE FACILITIES.—In the  
 19 case of any facility described in clause (i)  
 20 which is placed in service after the date of  
 21 the enactment of this clause, the 3-year pe-  
 22 riod beginning on the date the facility is  
 23 originally placed in service shall be sub-  
 24 stituted for the 10-year period in sub-  
 25 section (a)(2)(A)(ii).

1 “(iii) SPECIAL RULES FOR  
 2 PREEFFECTIVE DATE FACILITIES.—In the  
 3 case of any facility described in clause (i)  
 4 which is placed in service before the date  
 5 of the enactment of this clause—

6 “(I) subsection (a)(1) shall be  
 7 applied by substituting ‘1.0 cents’ for  
 8 ‘1.5 cents’, and

9 “(II) the 3-year period beginning  
 10 after the date of the enactment of this  
 11 subparagraph, shall be substituted for  
 12 the 10-year period in subsection  
 13 (a)(2)(A)(ii).

14 “(iv) CREDIT ELIGIBILITY.—In the  
 15 case of any facility described in clause (i),  
 16 if the owner of such facility is not the pro-  
 17 ducer of the electricity, the person eligible  
 18 for the credit allowable under subsection  
 19 (a) is the lessee or the operator of such fa-  
 20 cility.”.

21 (b) DEFINITION OF BIOMASS.—

22 (1) IN GENERAL.—Section 45(c)(1) (defining  
 23 qualified energy resources) is amended—

24 (A) by striking “and” at the end of sub-  
 25 paragraph (B),

1 (B) by striking the period at the end of  
 2 subparagraph (C) and inserting “, and”, and

3 (C) by adding at the end the following new  
 4 subparagraph:

5 “(D) biomass (other than closed-loop bio-  
 6 mass).”.

7 (2) BIOMASS DEFINED.—Section 45(c) (relating  
 8 to definitions) is amended by adding at the end the  
 9 following new paragraph:

10 “(5) BIOMASS.—The term ‘biomass’ means any  
 11 solid, nonhazardous, cellulosic waste material which  
 12 is segregated from other waste materials and which  
 13 is derived from—

14 “(A) any of the following forest-related re-  
 15 sources: mill residues, precommercial thinnings,  
 16 slash, and brush, but not including old-growth  
 17 timber (other than old-growth timber which has  
 18 been permitted or contracted for removal by  
 19 any appropriate Federal authority through the  
 20 National Environmental Policy Act or by any  
 21 appropriate State authority),

22 “(B) solid wood waste materials, including  
 23 waste pallets, crates, dunnage, manufacturing  
 24 and construction wood wastes (other than pres-  
 25 sure-treated, chemically-treated, or painted



wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

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

(c) COORDINATION WITH SECTION 29.—Section 45(c) (relating to definitions) is amended by adding at the end the following new paragraph:

“(6) COORDINATION WITH SECTION 29.—The term ‘qualified facility’ shall not include any facility the production from which is taken into account in determining any credit under section 29 for the taxable year or any prior taxable year.”.

(d) CLERICAL AMENDMENTS.—

(1) The heading for subsection (c) of section 45 is amended by inserting “AND SPECIAL RULES” after “DEFINITIONS”.

(2) The heading for subsection (d) of section 45 is amended by inserting “ADDITIONAL” before “DEFINITIONS”.

(e) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as provided in para-  
 2           graph (2), the amendments made by this section  
 3           shall apply to electricity sold after the date of the  
 4           enactment of this Act, in taxable years ending after  
 5           such date.

6           (2) CERTAIN BIOMASS FACILITIES.—With re-  
 7           spect to any facility described in section  
 8           45(c)(3)(D)(i) of the Internal Revenue Code of  
 9           1986, as added by this section, which is placed in  
 10          service before the date of the enactment of this Act,  
 11          the amendments made by this section shall apply to  
 12          electricity sold after the date of the enactment of  
 13          this Act, in taxable years ending after such date.

14 **SEC. 103. CREDIT FOR ELECTRICITY PRODUCED FROM**  
 15 **SWINE AND BOVINE WASTE NUTRIENTS, GEO-**  
 16 **THERMAL ENERGY, AND SOLAR ENERGY.**

17          (a) EXPANSION OF QUALIFIED ENERGY RE-  
 18          SOURCES.—

19           (1) IN GENERAL.—Section 45(c)(1) (defining  
 20           qualified energy resources), as amended by this Act,  
 21           is amended by striking “and” at the end of subpara-  
 22           graph (C), by striking the period at the end of sub-  
 23           paragraph (D) and inserting a comma, and by add-  
 24           ing at the end the following new subparagraphs:

25                   “(E) swine and bovine waste nutrients,

1 “(F) geothermal energy, and

2 “(G) solar energy.”.

3 (2) DEFINITIONS.—Section 45(c) (relating to  
4 definitions and special rules), as amended by this  
5 Act, is amended by redesignating paragraph (6) as  
6 paragraph (8) and by inserting after paragraph (5)  
7 the following new paragraphs:

8 “(6) SWINE AND BOVINE WASTE NUTRIENTS.—  
9 The term ‘swine and bovine waste nutrients’ means  
10 swine and bovine manure and litter, including bed-  
11 ding material for the disposition of manure.

12 “(7) GEOTHERMAL ENERGY.—The term ‘geo-  
13 thermal energy’ means energy derived from a geo-  
14 thermal deposit (within the meaning of section  
15 613(e)(2)).”.

16 (b) EXTENSION AND MODIFICATION OF  
17 PLACED-IN-SERVICE RULES.—Section 45(c)(3) (re-  
18 lating to qualified facility), as amended by this Act,  
19 is amended by adding at the end the following new  
20 subparagraphs:

21 “(E) SWINE AND BOVINE WASTE NUTRI-  
22 ENTS FACILITY.—In the case of a facility using  
23 swine and bovine waste nutrients to produce  
24 electricity, the term ‘qualified facility’ means  
25 any facility owned by the taxpayer which is

1 originally placed in service after the date of the  
 2 enactment of this subparagraph and before  
 3 January 1, 2007.

4 “(F) GEOTHERMAL OR SOLAR ENERGY FA-  
 5 CILITY.—

6 “(i) IN GENERAL.—In the case of a  
 7 facility using geothermal or solar energy to  
 8 produce electricity, the term ‘qualified fa-  
 9 cility’ means any facility owned by the tax-  
 10 payer which is originally placed in service  
 11 after the date of the enactment of this  
 12 clause and before January 1, 2007.

13 “(ii) SPECIAL RULE.—In the case of  
 14 any facility described in clause (i), the 5-  
 15 year period beginning on the date the facil-  
 16 ity was originally placed in service shall be  
 17 substituted for the 10-year period in sub-  
 18 section (a)(2)(A)(ii).”.

19 (c) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to electricity sold after the date  
 21 of the enactment of this Act, in taxable years ending after  
 22 such date.

1 **SEC. 104. TREATMENT OF PERSONS NOT ABLE TO USE EN-**  
 2 **TIRE CREDIT.**

3 (a) IN GENERAL.—Section 45(d) (relating to addi-  
 4 tional definitions and special rules), as amended by this  
 5 Act, is amended by adding at the end the following new  
 6 paragraph:

7 “(8) TREATMENT OF PERSONS NOT ABLE TO  
 8 USE ENTIRE CREDIT.—

9 “(A) ALLOWANCE OF CREDIT.—

10 “(i) IN GENERAL.—Except as other-  
 11 wise provided in this subsection—

12 “(I) any credit allowable under  
 13 subsection (a) with respect to a quali-  
 14 fied facility owned by a person de-  
 15 scribed in clause (ii) may be trans-  
 16 ferred or used as provided in this  
 17 paragraph, and

18 “(II) the determination as to  
 19 whether the credit is allowable shall  
 20 be made without regard to the tax-ex-  
 21 empt status of the person.

22 “(ii) PERSONS DESCRIBED.—A person  
 23 is described in this clause if the person  
 24 is—

1 “(I) an organization described in  
 2 section 501(c)(12)(C) and exempt  
 3 from tax under section 501(a),

4 “(II) an organization described  
 5 in section 1381(a)(2)(C),

6 “(III) a public utility (as defined  
 7 in section 136(c)(2)(B)), which is ex-  
 8 empt from income tax under this sub-  
 9 title,

10 “(IV) any State or political sub-  
 11 division thereof, the District of Co-  
 12 lumbia, any possession of the United  
 13 States, or any agency or instrumen-  
 14 tality of any of the foregoing, or

15 “(V) any Indian tribal govern-  
 16 ment (within the meaning of section  
 17 7871) or any agency or instrumen-  
 18 tality thereof.

19 “(B) TRANSFER OF CREDIT.—

20 “(i) IN GENERAL.—A person de-  
 21 scribed in subparagraph (A)(ii) may trans-  
 22 fer any credit to which subparagraph  
 23 (A)(i) applies through an assignment to  
 24 any other person not described in subpara-  
 25 graph (A)(ii). Such transfer may be re-

1 voked only with the consent of the Sec-  
2 retary.

3 “(ii) REGULATIONS.—The Secretary  
4 shall prescribe such regulations as nec-  
5 essary to ensure that any credit described  
6 in clause (i) is claimed once and not reas-  
7 signed by such other person.

8 “(iii) TRANSFER PROCEEDS TREATED  
9 AS ARISING FROM ESSENTIAL GOVERN-  
10 MENT FUNCTION.—Any proceeds derived  
11 by a person described in subclause (III),  
12 (IV), or (V) of subparagraph (A)(ii) from  
13 the transfer of any credit under clause (i)  
14 shall be treated as arising from the exer-  
15 cise of an essential government function.

16 “(C) USE OF CREDIT AS AN OFFSET.—  
17 Notwithstanding any other provision of law, in  
18 the case of a person described in subclause (I),  
19 (II), or (V) of subparagraph (A)(ii), any credit  
20 to which subparagraph (A)(i) applies may be  
21 applied by such person, to the extent provided  
22 by the Secretary of Agriculture, as a prepay-  
23 ment of any loan, debt, or other obligation the  
24 entity has incurred under subchapter I of chap-  
25 ter 31 of title 7 of the Rural Electrification Act

of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2003.

“(D) CREDIT NOT INCOME.—Any transfer under subparagraph (B) or use under subparagraph (C) of any credit to which subparagraph (A)(i) applies shall not be treated as income for purposes of section 501(c)(12).

“(E) TREATMENT OF UNRELATED PERSONS.—For purposes of subsection (a)(2)(B), sales among and between persons described in subparagraph (A)(ii) shall be treated as sales between unrelated parties.”.

(b) CREDITS NOT REDUCED BY TAX-EXEMPT BONDS OR CERTAIN OTHER SUBSIDIES.—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by striking clause (ii),

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii),

(3) by inserting “(other than any loan, debt, or other obligation incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the



1 date of the enactment of the Energy Tax Incentives  
 2 Act of 2003)” after “project” in clause (ii) (as so  
 3 redesignated),

4 (4) by adding at the end the following new sen-  
 5 tence: “This paragraph shall not apply with respect  
 6 to any facility described in subsection  
 7 (c)(3)(B)(i)(II).”, and

8 (5) by striking “TAX-EXEMPT BONDS,” in the  
 9 heading and inserting “CERTAIN”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to electricity sold after the date  
 12 of the enactment of this Act, in taxable years ending after  
 13 such date.

14 **SEC. 105. CREDIT FOR ELECTRICITY PRODUCED FROM**  
 15 **SMALL IRRIGATION POWER.**

16 (a) IN GENERAL.—Section 45(c)(1) (defining quali-  
 17 fied energy resources), as amended by this Act, is amend-  
 18 ed by striking “and” at the end of subparagraph (F), by  
 19 striking the period at the end of subparagraph (G) and  
 20 inserting “, and”, and by adding at the end the following  
 21 new subparagraph:

22 “(H) small irrigation power.”.

23 (b) QUALIFIED FACILITY.—Section 45(c)(3) (relat-  
 24 ing to qualified facility), as amended by this Act, is

1 amended by adding at the end the following new subpara-  
 2 graph:

3                   “(G) SMALL IRRIGATION POWER FACIL-  
 4                   ITY.—In the case of a facility using small irri-  
 5                   gation power to produce electricity, the term  
 6                   ‘qualified facility’ means any facility owned by  
 7                   the taxpayer which is originally placed in serv-  
 8                   ice after date of the enactment of this subpara-  
 9                   graph and before January 1, 2007.”.

10           (c) DEFINITION.—Section 45(c), as amended by this  
 11 Act, is amended by redesignating paragraph (8) as para-  
 12 graph (9) and by inserting after paragraph (7) the fol-  
 13 lowing new paragraph:

14                   “(8) SMALL IRRIGATION POWER.—The term  
 15                   ‘small irrigation power’ means power—

16                   “(A) generated without any dam or im-  
 17                   poundment of water through an irrigation sys-  
 18                   tem canal or ditch, and

19                   “(B) the installed capacity of which is less  
 20                   than 5 megawatts.”.

21           (d) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to electricity sold after the date  
 23 of the enactment of this Act, in taxable years ending after  
 24 such date.

1 **SEC. 106. CREDIT FOR ELECTRICITY PRODUCED FROM MU-**  
 2 **NICIPAL BIOSOLIDS AND RECYCLED SLUDGE.**

3 (a) IN GENERAL.—Section 45(c)(1) (defining quali-  
 4 fied energy resources), as amended by this Act, is amend-  
 5 ed by striking “and” at the end of subparagraph (G), by  
 6 striking the period at the end of subparagraph (H), and  
 7 by adding at the end the following new subparagraphs:

8 “(I) municipal biosolids, and

9 “(J) recycled sludge.”.

10 (b) QUALIFIED FACILITIES.—Section 45(c)(3) (relat-  
 11 ing to qualified facility), as amended by this Act, is  
 12 amended by adding at the end the following new subpara-  
 13 graphs:

14 “(H) MUNICIPAL BIOSOLIDS FACILITY.—

15 In the case of a facility using municipal bio-  
 16 solids to produce electricity, the term ‘qualified  
 17 facility’ means any facility owned by the tax-  
 18 payer which is originally placed in service after  
 19 the date of the enactment of this subparagraph  
 20 and before January 1, 2007.

21 “(I) RECYCLED SLUDGE FACILITY.—

22 “(i) IN GENERAL.—In the case of a  
 23 facility using recycled sludge to produce  
 24 electricity, the term ‘qualified facility’  
 25 means any facility owned by the taxpayer

1 which is originally placed in service before  
 2 January 1, 2007.

3 “(ii) SPECIAL RULE.—In the case of a  
 4 qualified facility described in clause (i), the  
 5 10-year period referred to in subsection (a)  
 6 shall be treated as beginning no earlier  
 7 than the date of the enactment of this sub-  
 8 paragraph.”.

9 (c) DEFINITIONS.—Section 45(c), as amended by this  
 10 Act, is amended by redesignating paragraph (9) as para-  
 11 graph (11) and by inserting after paragraph (8) the fol-  
 12 lowing new paragraphs:

13 “(9) MUNICIPAL BIOSOLIDS.—The term ‘munic-  
 14 ipal biosolids’ means the residue or solids removed  
 15 by a municipal wastewater treatment facility.

16 “(10) RECYCLED SLUDGE.—

17 “(A) IN GENERAL.—The term ‘recycled  
 18 sludge’ means the recycled residue byproduct  
 19 created in the treatment of commercial, indus-  
 20 trial, municipal, or navigational wastewater.

21 “(B) RECYCLED.—The term ‘recycled’  
 22 means the processing of residue into a market-  
 23 able product, but does not include incineration  
 24 for the purpose of volume reduction.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to electricity sold after the date  
 3 of the enactment of this Act, in taxable years ending after  
 4 such date.

## 5 **TITLE II—ALTERNATIVE MOTOR** 6 **VEHICLES AND FUELS INCEN-** 7 **TIVES**

### 8 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT.**

9 (a) IN GENERAL.—Subpart B of part IV of sub-  
 10 chapter A of chapter 1 (relating to foreign tax credit, etc.)  
 11 is amended by adding at the end the following new section:

#### 12 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

13 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
 14 lowed as a credit against the tax imposed by this chapter  
 15 for the taxable year an amount equal to the sum of—

16 “(1) the new qualified fuel cell motor vehicle  
 17 credit determined under subsection (b),

18 “(2) the new qualified hybrid motor vehicle  
 19 credit determined under subsection (c), and

20 “(3) the new qualified alternative fuel motor ve-  
 21 hicle credit determined under subsection (d).

22 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE  
 23 CREDIT.—

24 “(1) IN GENERAL.—For purposes of subsection

25 (a), the new qualified fuel cell motor vehicle credit

1 determined under this subsection with respect to a  
2 new qualified fuel cell motor vehicle placed in service  
3 by the taxpayer during the taxable year is—

4 “(A) \$4,000, if such vehicle has a gross ve-  
5 hicle weight rating of not more than 8,500  
6 pounds,

7 “(B) \$10,000, if such vehicle has a gross  
8 vehicle weight rating of more than 8,500  
9 pounds but not more than 14,000 pounds,

10 “(C) \$20,000, if such vehicle has a gross  
11 vehicle weight rating of more than 14,000  
12 pounds but not more than 26,000 pounds, and

13 “(D) \$40,000, if such vehicle has a gross  
14 vehicle weight rating of more than 26,000  
15 pounds.

16 “(2) INCREASE FOR FUEL EFFICIENCY.—

17 “(A) IN GENERAL.—The amount deter-  
18 mined under paragraph (1)(A) with respect to  
19 a new qualified fuel cell motor vehicle which is  
20 a passenger automobile or light truck shall be  
21 increased by—

22 “(i) \$1,000, if such vehicle achieves at  
23 least 150 percent but less than 175 per-  
24 cent of the 2002 model year city fuel econ-  
25 omy,

1           “(ii) \$1,500, if such vehicle achieves  
2           at least 175 percent but less than 200 per-  
3           cent of the 2002 model year city fuel econ-  
4           omy,

5           “(iii) \$2,000, if such vehicle achieves  
6           at least 200 percent but less than 225 per-  
7           cent of the 2002 model year city fuel econ-  
8           omy,

9           “(iv) \$2,500, if such vehicle achieves  
10          at least 225 percent but less than 250 per-  
11          cent of the 2002 model year city fuel econ-  
12          omy,

13          “(v) \$3,000, if such vehicle achieves  
14          at least 250 percent but less than 275 per-  
15          cent of the 2002 model year city fuel econ-  
16          omy,

17          “(vi) \$3,500, if such vehicle achieves  
18          at least 275 percent but less than 300 per-  
19          cent of the 2002 model year city fuel econ-  
20          omy, and

21          “(vii) \$4,000, if such vehicle achieves  
22          at least 300 percent of the 2002 model  
23          year city fuel economy.

24          “(B) 2002 MODEL YEAR CITY FUEL ECON-  
25          OMY.—For purposes of subparagraph (A), the

1           2002 model year city fuel economy with respect  
 2           to a vehicle shall be determined in accordance  
 3           with the following tables:

4                           “(i) In the case of a passenger auto-  
 5                           mobile:

<b>“If vehicle inertia weight class is:</b>	<b>The 2002 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	45.2 mpg
2,000 lbs .....	39.6 mpg
2,250 lbs .....	35.2 mpg
2,500 lbs .....	31.7 mpg
2,750 lbs .....	28.8 mpg
3,000 lbs .....	26.4 mpg
3,500 lbs .....	22.6 mpg
4,000 lbs .....	19.8 mpg
4,500 lbs .....	17.6 mpg
5,000 lbs .....	15.9 mpg
5,500 lbs .....	14.4 mpg
6,000 lbs .....	13.2 mpg
6,500 lbs .....	12.2 mpg
7,000 to 8,500 lbs .....	11.3 mpg.

6                           “(ii) In the case of a light truck:

<b>“If vehicle inertia weight class is:</b>	<b>The 2002 model year city fuel economy is:</b>
1,500 or 1,750 lbs .....	39.4 mpg
2,000 lbs .....	35.2 mpg
2,250 lbs .....	31.8 mpg
2,500 lbs .....	29.0 mpg
2,750 lbs .....	26.8 mpg
3,000 lbs .....	24.9 mpg
3,500 lbs .....	21.8 mpg
4,000 lbs .....	19.4 mpg
4,500 lbs .....	17.6 mpg
5,000 lbs .....	16.1 mpg
5,500 lbs .....	14.8 mpg
6,000 lbs .....	13.7 mpg
6,500 lbs .....	12.8 mpg
7,000 to 8,500 lbs .....	12.1 mpg.

7                           “(C) VEHICLE INERTIA WEIGHT CLASS.—

8           For purposes of subparagraph (B), the term  
 9           ‘vehicle inertia weight class’ has the same  
 10          meaning as when defined in regulations pre-



scribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

“(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term ‘new qualified fuel cell motor vehicle’ means a motor vehicle—

“(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

“(B) which, in the case of a passenger automobile or light truck—

“(i) for 2002 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

“(ii) for 2004 and later model vehicles, has received a certificate that such ve-

1            hicle meets or exceeds the Bin 5 Tier II  
 2            emission level established in regulations  
 3            prescribed by the Administrator of the En-  
 4            vironmental Protection Agency under sec-  
 5            tion 202(i) of the Clean Air Act for that  
 6            make and model year vehicle,

7            “(C) the original use of which commences  
 8            with the taxpayer,

9            “(D) which is acquired for use or lease by  
 10           the taxpayer and not for resale, and

11           “(E) which is made by a manufacturer.

12           “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE  
 13 CREDIT.—

14           “(1) IN GENERAL.—For purposes of subsection  
 15           (a), the new qualified hybrid motor vehicle credit de-  
 16           termined under this subsection with respect to a new  
 17           qualified hybrid motor vehicle placed in service by  
 18           the taxpayer during the taxable year is the credit  
 19           amount determined under paragraph (2).

20           “(2) CREDIT AMOUNT.—

21           “(A) IN GENERAL.—The credit amount de-  
 22           termined under this paragraph shall be deter-  
 23           mined in accordance with the following tables:

24           “(i) In the case of a new qualified hy-  
 25           brid motor vehicle which is a passenger

1                    automobile or light truck and which pro-  
 2                    vides the following percentage of the max-  
 3                    imum available power:

**“If percentage of the maximum  
 available power is:**

**The credit amount is:**

At least 4 percent but less than 10 percent .....	\$250
At least 10 percent but less than 20 percent .....	\$500
At least 20 percent but less than 30 percent .....	\$750
At least 30 percent .....	\$1,000.

4                    “(ii) In the case of a new qualified hy-  
 5                    brid motor vehicle which is a heavy duty  
 6                    hybrid motor vehicle and which provides  
 7                    the following percentage of the maximum  
 8                    available power:

9                    “(I) If such vehicle has a gross  
 10                    vehicle weight rating of not more than  
 11                    14,000 pounds:

**“If percentage of the maximum  
 available power is:**

**The credit amount is:**

At least 20 percent but less than 30 percent .....	\$1,000
At least 30 percent but less than 40 percent .....	\$1,750
At least 40 percent but less than 50 percent .....	\$2,000
At least 50 percent but less than 60 percent .....	\$2,250
At least 60 percent .....	\$2,500.

12                    “(II) If such vehicle has a gross  
 13                    vehicle weight rating of more than  
 14                    14,000 but not more than 26,000  
 15                    pounds:

**“If percentage of the maximum  
 available power is:**

**The credit amount is:**

At least 20 percent but less than 30 percent .....	\$4,000
At least 30 percent but less than 40 percent .....	\$4,500
At least 40 percent but less than 50 percent .....	\$5,000
At least 50 percent but less than 60 percent .....	\$5,500
At least 60 percent .....	\$6,000.

1                   “(III) If such vehicle has a gross  
 2                   vehicle weight rating of more than  
 3                   26,000 pounds:

**“If percentage of the maximum  
 available power is:**

**The credit amount is:**

At least 20 percent but less than 30 percent .....	\$6,000
At least 30 percent but less than 40 percent .....	\$7,000
At least 40 percent but less than 50 percent .....	\$8,000
At least 50 percent but less than 60 percent .....	\$9,000
At least 60 percent .....	\$10,000.

4                   “(B) INCREASE FOR FUEL EFFICIENCY.—

5                   “(i) AMOUNT.—The amount deter-  
 6                   mined under subparagraph (A)(i) with re-  
 7                   spect to a new qualified hybrid motor vehi-  
 8                   cle which is a passenger automobile or  
 9                   light truck shall be increased by—

10                   “(I) \$500, if such vehicle  
 11                   achieves at least 125 percent but less  
 12                   than 150 percent of the 2002 model  
 13                   year city fuel economy,

14                   “(II) \$1,000, if such vehicle  
 15                   achieves at least 150 percent but less  
 16                   than 175 percent of the 2002 model  
 17                   year city fuel economy,

18                   “(III) \$1,500, if such vehicle  
 19                   achieves at least 175 percent but less  
 20                   than 200 percent of the 2002 model  
 21                   year city fuel economy,

1                   “(IV) \$2,000, if such vehicle  
2 achieves at least 200 percent but less  
3 than 225 percent of the 2002 model  
4 year city fuel economy,

5                   “(V) \$2,500, if such vehicle  
6 achieves at least 225 percent but less  
7 than 250 percent of the 2002 model  
8 year city fuel economy, and

9                   “(VI) \$3,000, if such vehicle  
10 achieves at least 250 percent of the  
11 2002 model year city fuel economy.

12                  “(ii) 2002 MODEL YEAR CITY FUEL  
13 ECONOMY.—For purposes of clause (i), the  
14 2002 model year city fuel economy with re-  
15 spect to a vehicle shall be determined using  
16 the tables provided in subsection (b)(2)(B)  
17 with respect to such vehicle.

18                  “(C) INCREASE FOR ACCELERATED EMIS-  
19 SIONS PERFORMANCE.—The amount deter-  
20 mined under subparagraph (A)(ii) with respect  
21 to an applicable heavy duty hybrid motor vehi-  
22 cle shall be increased by the increased credit  
23 amount determined in accordance with the fol-  
24 lowing tables:

1 “(i) In the case of a vehicle which has  
 2 a gross vehicle weight rating of not more  
 3 than 14,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2003 .....	\$3,000
2004 .....	\$2,500
2005 .....	\$2,000
2006 .....	\$1,500.

4 “(ii) In the case of a vehicle which  
 5 has a gross vehicle weight rating of more  
 6 than 14,000 pounds but not more than  
 7 26,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2003 .....	\$7,750
2004 .....	\$6,500
2005 .....	\$5,250
2006 .....	\$4,000.

8 “(iii) In the case of a vehicle which  
 9 has a gross vehicle weight rating of more  
 10 than 26,000 pounds:

<b>“If the model year is:</b>	<b>The increased credit amount is:</b>
2003 .....	\$12,000
2004 .....	\$10,000
2005 .....	\$8,000
2006 .....	\$6,000.

11 “(D) DEFINITIONS.—

12 “(i) APPLICABLE HEAVY DUTY HY-  
 13 BRID MOTOR VEHICLE.—For purposes of  
 14 subparagraph (C), the term ‘applicable  
 15 heavy duty hybrid motor vehicle’ means a  
 16 heavy duty hybrid motor vehicle which is  
 17 powered by an internal combustion or heat

1 engine which is certified as meeting the  
2 emission standards set in the regulations  
3 prescribed by the Administrator of the En-  
4 vironmental Protection Agency for 2007  
5 and later model year diesel heavy duty en-  
6 gines, or for 2008 and later model year  
7 ottocycle heavy duty engines, as applicable.

8 “(ii) HEAVY DUTY HYBRID MOTOR VE-  
9 HICLE.—For purposes of this paragraph,  
10 the term ‘heavy duty hybrid motor vehicle’  
11 means a new qualified hybrid motor vehicle  
12 which has a gross vehicle weight rating of  
13 more than 10,000 pounds and draws pro-  
14 pulsion energy from both of the following  
15 onboard sources of stored energy:

16 “(I) An internal combustion or  
17 heat engine using consumable fuel  
18 which, for 2002 and later model vehi-  
19 cles, has received a certificate of con-  
20 formity under the Clean Air Act and  
21 meets or exceeds a level of not greater  
22 than 3.0 grams per brake horse-  
23 power-hour of oxides of nitrogen and  
24 0.01 per brake horsepower-hour of  
25 particulate matter.

1                   “(II) A rechargeable energy stor-  
2 age system.

3                   “(iii) MAXIMUM AVAILABLE POWER.—

4                   “(I) PASSENGER AUTOMOBILE  
5 OR LIGHT TRUCK.—For purposes of  
6 subparagraph (A)(i), the term ‘max-  
7 imum available power’ means the  
8 maximum power available from the re-  
9 chargeable energy storage system,  
10 during a standard 10 second pulse  
11 power or equivalent test, divided by  
12 such maximum power and the SAE  
13 net power of the heat engine.

14                   “(II) HEAVY DUTY HYBRID  
15 MOTOR VEHICLE.—For purposes of  
16 subparagraph (A)(ii), the term ‘max-  
17 imum available power’ means the  
18 maximum power available from the re-  
19 chargeable energy storage system,  
20 during a standard 10 second pulse  
21 power or equivalent test, divided by  
22 the vehicle’s total traction power. The  
23 term ‘total traction power’ means the  
24 sum of the peak power from the re-  
25 chargeable energy storage system and



1 the heat engine peak power of the ve-  
 2 hicle, except that if such storage sys-  
 3 tem is the sole means by which the ve-  
 4 hicle can be driven, the total traction  
 5 power is the peak power of such stor-  
 6 age system.

7 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-  
 8 CLE.—For purposes of this subsection, the term  
 9 ‘new qualified hybrid motor vehicle’ means a motor  
 10 vehicle—

11 “(A) which draws propulsion energy from  
 12 onboard sources of stored energy which are  
 13 both—

14 “(i) an internal combustion or heat  
 15 engine using combustible fuel, and

16 “(ii) a rechargeable energy storage  
 17 system,

18 “(B) which, in the case of a passenger  
 19 automobile or light truck—

20 “(i) for 2002 and later model vehicles,  
 21 has received a certificate of conformity  
 22 under the Clean Air Act and meets or ex-  
 23 ceeds the equivalent qualifying California  
 24 low emission vehicle standard under sec-

1                   tion 243(e)(2) of the Clean Air Act for  
2                   that make and model year, and

3                   “(ii) for 2004 and later model vehi-  
4                   cles, has received a certificate that such ve-  
5                   hicle meets or exceeds the Bin 5 Tier II  
6                   emission level established in regulations  
7                   prescribed by the Administrator of the En-  
8                   vironmental Protection Agency under sec-  
9                   tion 202(i) of the Clean Air Act for that  
10                  make and model year vehicle,

11                  “(C) the original use of which commences  
12                  with the taxpayer,

13                  “(D) which is acquired for use or lease by  
14                  the taxpayer and not for resale, and

15                  “(E) which is made by a manufacturer.

16                  “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR  
17                  VEHICLE CREDIT.—

18                  “(1) ALLOWANCE OF CREDIT.—Except as pro-  
19                  vided in paragraph (5), the new qualified alternative  
20                  fuel motor vehicle credit determined under this sub-  
21                  section is an amount equal to the applicable percent-  
22                  age of the incremental cost of any new qualified al-  
23                  ternative fuel motor vehicle placed in service by the  
24                  taxpayer during the taxable year.

1           “(2) APPLICABLE PERCENTAGE.—For purposes  
2           of paragraph (1), the applicable percentage with re-  
3           spect to any new qualified alternative fuel motor ve-  
4           hicle is—

5                   “(A) 40 percent, plus

6                   “(B) 30 percent, if such vehicle—

7                           “(i) has received a certificate of con-  
8                           formity under the Clean Air Act and meets  
9                           or exceeds the most stringent standard  
10                          available for certification under the Clean  
11                          Air Act for that make and model year vehi-  
12                          cle (other than a zero emission standard),  
13                          or

14                           “(ii) has received an order certifying  
15                           the vehicle as meeting the same require-  
16                           ments as vehicles which may be sold or  
17                           leased in California and meets or exceeds  
18                           the most stringent standard available for  
19                           certification under the State laws of Cali-  
20                           fornia (enacted in accordance with a waiv-  
21                           er granted under section 209(b) of the  
22                           Clean Air Act) for that make and model  
23                           year vehicle (other than a zero emission  
24                           standard).

1           “(3) INCREMENTAL COST.—For purposes of  
2           this subsection, the incremental cost of any new  
3           qualified alternative fuel motor vehicle is equal to  
4           the amount of the excess of the manufacturer’s sug-  
5           gested retail price for such vehicle over such price  
6           for a gasoline or diesel fuel motor vehicle of the  
7           same model, to the extent such amount does not ex-  
8           ceed—

9                   “(A) \$5,000, if such vehicle has a gross ve-  
10           hicle weight rating of not more than 8,500  
11           pounds,

12                   “(B) \$10,000, if such vehicle has a gross  
13           vehicle weight rating of more than 8,500  
14           pounds but not more than 14,000 pounds,

15                   “(C) \$25,000, if such vehicle has a gross  
16           vehicle weight rating of more than 14,000  
17           pounds but not more than 26,000 pounds, and

18                   “(D) \$40,000, if such vehicle has a gross  
19           vehicle weight rating of more than 26,000  
20           pounds.

21           “(4) NEW QUALIFIED ALTERNATIVE FUEL  
22           MOTOR VEHICLE.—For purposes of this sub-  
23           section—

“(A) IN GENERAL.—The term ‘new qualified alternative fuel motor vehicle’ means any motor vehicle—

“(i) which is only capable of operating on an alternative fuel,

“(ii) the original use of which commences with the taxpayer,

“(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

“(iv) which is made by a manufacturer.

“(B) ALTERNATIVE FUEL.—The term ‘alternative fuel’ means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

“(5) CREDIT FOR MIXED-FUEL VEHICLES.—

“(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

“(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which

would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

“(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

“(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘mixed-fuel vehicle’ means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

“(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

“(ii) either—

“(I) has received a certificate of conformity under the Clean Air Act, or

“(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets

1 or exceeds the low emission vehicle  
2 standard under section 88.105–94 of  
3 title 40, Code of Federal Regulations,  
4 for that make and model year vehicle,  
5 “(iii) the original use of which com-  
6 mences with the taxpayer,

7 “(iv) which is acquired by the tax-  
8 payer for use or lease, but not for resale,  
9 and

10 “(v) which is made by a manufac-  
11 turer.

12 “(C) 75/25 MIXED-FUEL VEHICLE.—For  
13 purposes of this subsection, the term ‘75/25  
14 mixed-fuel vehicle’ means a mixed-fuel vehicle  
15 which operates using at least 75 percent alter-  
16 native fuel and not more than 25 percent petro-  
17 leum-based fuel.

18 “(D) 90/10 MIXED-FUEL VEHICLE.—For  
19 purposes of this subsection, the term ‘90/10  
20 mixed-fuel vehicle’ means a mixed-fuel vehicle  
21 which operates using at least 90 percent alter-  
22 native fuel and not more than 10 percent petro-  
23 leum-based fuel.

1       “(e) APPLICATION WITH OTHER CREDITS.—The  
 2 credit allowed under subsection (a) for any taxable year  
 3 shall not exceed the excess (if any) of—

4           “(1) the regular tax for the taxable year re-  
 5 duced by the sum of the credits allowable under sub-  
 6 part A and sections 27, 29, and 30, over

7           “(2) the tentative minimum tax for the taxable  
 8 year.

9       “(f) OTHER DEFINITIONS AND SPECIAL RULES.—  
 10 For purposes of this section—

11           “(1) CONSUMABLE FUEL.—The term  
 12 ‘consumable fuel’ means any solid, liquid, or gaseous  
 13 matter which releases energy when consumed by an  
 14 auxiliary power unit.

15           “(2) MOTOR VEHICLE.—The term ‘motor vehi-  
 16 cle’ has the meaning given such term by section  
 17 30(c)(2).

18           “(3) CITY FUEL ECONOMY.—The city fuel econ-  
 19 omy with respect to any vehicle shall be measured in  
 20 a manner which is substantially similar to the man-  
 21 ner city fuel economy is measured in accordance  
 22 with procedures under part 600 of subchapter Q of  
 23 chapter I of title 40, Code of Federal Regulations,  
 24 as in effect on the date of the enactment of this sec-  
 25 tion.



1           “(4) OTHER TERMS.—The terms ‘automobile’,  
 2           ‘passenger automobile’, ‘light truck’, and ‘manufac-  
 3           turer’ have the meanings given such terms in regula-  
 4           tions prescribed by the Administrator of the Envi-  
 5           ronmental Protection Agency for purposes of the ad-  
 6           ministration of title II of the Clean Air Act (42  
 7           U.S.C. 7521 et seq.).

8           “(5) REDUCTION IN BASIS.—For purposes of  
 9           this subtitle, the basis of any property for which a  
 10          credit is allowable under subsection (a) shall be re-  
 11          duced by the amount of such credit so allowed (de-  
 12          termined without regard to subsection (e)).

13          “(6) NO DOUBLE BENEFIT.—The amount of  
 14          any deduction or other credit allowable under this  
 15          chapter—

16               “(A) for any incremental cost taken into  
 17               account in computing the amount of the credit  
 18               determined under subsection (d) shall be re-  
 19               duced by the amount of such credit attributable  
 20               to such cost, and

21               “(B) with respect to a vehicle described  
 22               under subsection (b) or (c), shall be reduced by  
 23               the amount of credit allowed under subsection  
 24               (a) for such vehicle for the taxable year.

1           “(7) PROPERTY USED BY TAX-EXEMPT ENTI-  
 2           TIES.—In the case of a credit amount which is al-  
 3           lowable with respect to a motor vehicle which is ac-  
 4           quired by an entity exempt from tax under this  
 5           chapter, the person which sells or leases such vehicle  
 6           to the entity shall be treated as the taxpayer with  
 7           respect to the vehicle for purposes of this section  
 8           and the credit shall be allowed to such person, but  
 9           only if the person clearly discloses to the entity at  
 10          the time of any sale or lease the specific amount of  
 11          any credit otherwise allowable to the entity under  
 12          this section.

13           “(8) RECAPTURE.—The Secretary shall, by reg-  
 14          ulations, provide for recapturing the benefit of any  
 15          credit allowable under subsection (a) with respect to  
 16          any property which ceases to be property eligible for  
 17          such credit (including recapture in the case of a  
 18          lease period of less than the economic life of a vehi-  
 19          cle).

20           “(9) PROPERTY USED OUTSIDE UNITED  
 21          STATES, ETC., NOT QUALIFIED.—No credit shall be  
 22          allowed under subsection (a) with respect to any  
 23          property referred to in section 50(b) or with respect  
 24          to the portion of the cost of any property taken into  
 25          account under section 179.

1           “(10) ELECTION TO NOT TAKE CREDIT.—No  
 2           credit shall be allowed under subsection (a) for any  
 3           vehicle if the taxpayer elects to not have this section  
 4           apply to such vehicle.

5           “(11) CARRYBACK AND CARRYFORWARD AL-  
 6           LOWED.—

7                   “(A) IN GENERAL.—If the credit amount  
 8           allowable under subsection (a) for a taxable  
 9           year exceeds the amount of the limitation under  
 10          subsection (e) for such taxable year (in this  
 11          paragraph referred to as the ‘unused credit  
 12          year’), such excess shall be allowed as a credit  
 13          carryback for each of the 3 taxable years begin-  
 14          ning after the date of the enactment of this  
 15          paragraph, which precede the unused credit  
 16          year and a credit carryforward for each of the  
 17          20 taxable years which succeed the unused  
 18          credit year.

19                   “(B) RULES.—Rules similar to the rules of  
 20          section 39 shall apply with respect to the credit  
 21          carryback and credit carryforward under sub-  
 22          paragraph (A).

23           “(12) INTERACTION WITH AIR QUALITY AND  
 24          MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-  
 25          erwise provided in this section, a motor vehicle shall

1 not be considered eligible for a credit under this sec-  
 2 tion unless such vehicle is in compliance with—

3 “(A) the applicable provisions of the Clean  
 4 Air Act for the applicable make and model year  
 5 of the vehicle (or applicable air quality provi-  
 6 sions of State law in the case of a State which  
 7 has adopted such provision under a waiver  
 8 under section 209(b) of the Clean Air Act), and

9 “(B) the motor vehicle safety provisions of  
 10 sections 30101 through 30169 of title 49,  
 11 United States Code.

12 “(g) REGULATIONS.—

13 “(1) IN GENERAL.—Except as provided in para-  
 14 graph (2), the Secretary shall promulgate such regu-  
 15 lations as necessary to carry out the provisions of  
 16 this section.

17 “(2) COORDINATION IN PRESCRIPTION OF CER-  
 18 TAIN REGULATIONS.—The Secretary of the Treas-  
 19 ury, in coordination with the Secretary of Transpor-  
 20 tation and the Administrator of the Environmental  
 21 Protection Agency, shall prescribe such regulations  
 22 as necessary to determine whether a motor vehicle  
 23 meets the requirements to be eligible for a credit  
 24 under this section.

1 “(h) TERMINATION.—This section shall not apply to  
2 any property purchased after—

3 “(1) in the case of a new qualified fuel cell  
4 motor vehicle (as described in subsection (b)), De-  
5 cember 31, 2011, and

6 “(2) in the case of any other property, Decem-  
7 ber 31, 2006.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 1016(a) is amended by striking  
10 “and” at the end of paragraph (27), by striking the  
11 period at the end of paragraph (28) and inserting “,  
12 and”, and by adding at the end the following new  
13 paragraph:

14 “(29) to the extent provided in section  
15 30B(f)(5).”.

16 (2) Section 55(c)(2) is amended by inserting  
17 “30B(e),” after “30(b)(3)”.

18 (3) Section 6501(m) is amended by inserting  
19 “30B(f)(10),” after “30(d)(4),”.

20 (4) The table of sections for subpart B of part  
21 IV of subchapter A of chapter 1 is amended by in-  
22 serting after the item relating to section 30A the fol-  
23 lowing new item:

“Sec. 30B. Alternative motor vehicle credit.”.

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to property placed in service after

1 the date of the enactment of this Act, in taxable years  
 2 ending after such date.

3 **SEC. 202. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**  
 4 **TRIC VEHICLES.**

5 (a) AMOUNT OF CREDIT.—

6 (1) IN GENERAL.—Section 30(a) (relating to al-  
 7 lowance of credit) is amended by striking “10 per-  
 8 cent of”.

9 (2) LIMITATION OF CREDIT ACCORDING TO  
 10 TYPE OF VEHICLE.—Section 30(b) (relating to limi-  
 11 tations) is amended—

12 (A) by striking paragraphs (1) and (2) and  
 13 inserting the following new paragraph:

14 “(1) LIMITATION ACCORDING TO TYPE OF VE-  
 15 HICLE.—The amount of the credit allowed under  
 16 subsection (a) for any vehicle shall not exceed the  
 17 greatest of the following amounts applicable to such  
 18 vehicle:

19 “(A) In the case of a vehicle which con-  
 20 forms to the Motor Vehicle Safety Standard  
 21 500 prescribed by the Secretary of Transpor-  
 22 tation, as in effect on the date of the enactment  
 23 of the Energy Tax Incentives Act of 2003, the  
 24 lesser of—

1 “(i) 10 percent of the manufacturer’s  
2 suggested retail price of the vehicle, or

3 “(ii) \$1,500.

4 “(B) In the case of a vehicle not described  
5 in subparagraph (A) with a gross vehicle weight  
6 rating not exceeding 8,500 pounds—

7 “(i) \$3,500, or

8 “(ii) \$6,000, if such vehicle is—

9 “(I) capable of a driving range of  
10 at least 100 miles on a single charge  
11 of the vehicle’s rechargeable batteries  
12 as measured pursuant to the urban  
13 dynamometer schedules under appen-  
14 dix I to part 86 of title 40, Code of  
15 Federal Regulations, or

16 “(II) capable of a payload capac-  
17 ity of at least 1,000 pounds.

18 “(C) In the case of a vehicle with a gross  
19 vehicle weight rating exceeding 8,500 but not  
20 exceeding 14,000 pounds, \$10,000.

21 “(D) In the case of a vehicle with a gross  
22 vehicle weight rating exceeding 14,000 but not  
23 exceeding 26,000 pounds, \$20,000.

1 “(E) In the case of a vehicle with a gross  
 2 vehicle weight rating exceeding 26,000 pounds,  
 3 \$40,000.”, and

4 (B) by redesignating paragraph (3) as  
 5 paragraph (2).

6 (3) CONFORMING AMENDMENTS.—

7 (A) Section 53(d)(1)(B)(iii) is amended by  
 8 striking “section 30(b)(3)(B)” and inserting  
 9 “section 30(b)(2)(B)”.

10 (3) Section 55(c)(2), as amended by this Act, is  
 11 amended by striking “30(b)(3)” and inserting  
 12 “30(b)(2)”.

13 (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

14 (1) IN GENERAL.—Section 30(c)(1)(A) (defin-  
 15 ing qualified electric vehicle) is amended to read as  
 16 follows:

17 “(A) which is—

18 “(i) operated solely by use of a bat-  
 19 tery or battery pack, or

20 “(ii) powered primarily through the  
 21 use of an electric battery or battery pack  
 22 using a flywheel or capacitor which stores  
 23 energy produced by an electric motor  
 24 through regenerative braking to assist in  
 25 vehicle operation,”.



1           (2) LEASED VEHICLES.—Section 30(c)(1)(C) is  
2       amended by inserting “or lease” after “use”.

3           (3) CONFORMING AMENDMENTS.—

4           (A) Subsections (a), (b)(2), and (c) of sec-  
5       tion 30 are each amended by inserting “bat-  
6       tery” after “qualified” each place it appears.

7           (B) The heading of subsection (c) of sec-  
8       tion 30 is amended by inserting “BATTERY”  
9       after “QUALIFIED”.

10          (C) The heading of section 30 is amended  
11       by inserting “**BATTERY**” after “**QUALIFIED**”.

12          (D) The item relating to section 30 in the  
13       table of sections for subpart B of part IV of  
14       subchapter A of chapter 1 is amended by in-  
15       serting “battery” after “qualified”.

16          (E) Section 179A(c)(3) is amended by in-  
17       serting “battery” before “electric”.

18          (F) The heading of paragraph (3) of sec-  
19       tion 179A(c) is amended by inserting “BAT-  
20       TERY” before “ELECTRIC”.

21       (c) ADDITIONAL SPECIAL RULES.—Section 30(d)  
22       (relating to special rules) is amended by adding at the end  
23       the following new paragraphs:

24           “(5) NO DOUBLE BENEFIT.—The amount of  
25       any deduction or other credit allowable under this

chapter for any cost taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such cost.

“(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

“(7) CARRYBACK AND CARRYFORWARD ALLOWED.—

“(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (b)(2) for such taxable year (in this paragraph referred to as the ‘unused credit year’), such excess shall be allowed as a credit carryback for each of the 3 taxable years beginning after the date of the enactment of this

1 paragraph, which precede the unused credit  
 2 year and a credit carryforward for each of the  
 3 20 taxable years which succeed the unused  
 4 credit year.

5 “(B) RULES.—Rules similar to the rules of  
 6 section 39 shall apply with respect to the credit  
 7 carryback and credit carryforward under sub-  
 8 paragraph (A).”.

9 (d) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to property placed in service after  
 11 the date of the enactment of this Act, in taxable years  
 12 ending after such date.

13 **SEC. 203. CREDIT FOR INSTALLATION OF ALTERNATIVE**  
 14 **FUELING STATIONS.**

15 (a) IN GENERAL.—Subpart B of part IV of sub-  
 16 chapter A of chapter 1 (relating to foreign tax credit, etc.),  
 17 as amended by this Act, is amended by adding at the end  
 18 the following new section:

19 **“SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY**  
 20 **CREDIT.**

21 “(a) CREDIT ALLOWED.—There shall be allowed as  
 22 a credit against the tax imposed by this chapter for the  
 23 taxable year an amount equal to 50 percent of the amount  
 24 paid or incurred by the taxpayer during the taxable year

1 for the installation of qualified clean-fuel vehicle refueling  
2 property.

3 “(b) LIMITATION.—The credit allowed under sub-  
4 section (a)—

5 “(1) with respect to any retail clean-fuel vehicle  
6 refueling property, shall not exceed \$30,000, and

7 “(2) with respect to any residential clean-fuel  
8 vehicle refueling property, shall not exceed \$1,000.

9 “(c) YEAR CREDIT ALLOWED.—The credit allowed  
10 under subsection (a) shall be allowed in the taxable year  
11 in which the qualified clean-fuel vehicle refueling property  
12 is placed in service by the taxpayer.

13 “(d) DEFINITIONS.—For purposes of this section—

14 “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-  
15 FUELING PROPERTY.—The term ‘qualified clean-fuel  
16 vehicle refueling property’ has the same meaning  
17 given such term by section 179A(d).

18 “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-  
19 FUELING PROPERTY.—The term ‘residential clean-  
20 fuel vehicle refueling property’ means qualified  
21 clean-fuel vehicle refueling property which is in-  
22 stalled on property which is used as the principal  
23 residence (within the meaning of section 121) of the  
24 taxpayer.

1           “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING  
 2       PROPERTY.—The term ‘retail clean-fuel vehicle re-  
 3       fueling property’ means qualified clean-fuel vehicle  
 4       refueling property which is installed on property  
 5       (other than property described in paragraph (2))  
 6       used in a trade or business of the taxpayer.

7           “(e) APPLICATION WITH OTHER CREDITS.—The  
 8       credit allowed under subsection (a) for any taxable year  
 9       shall not exceed the excess (if any) of—

10           “(1) the regular tax for the taxable year re-  
 11       duced by the sum of the credits allowable under sub-  
 12       part A and sections 27, 29, 30, and 30B, over

13           “(2) the tentative minimum tax for the taxable  
 14       year.

15           “(f) BASIS REDUCTION.—For purposes of this title,  
 16       the basis of any property shall be reduced by the portion  
 17       of the cost of such property taken into account under sub-  
 18       section (a).

19           “(g) NO DOUBLE BENEFIT.—No deduction shall be  
 20       allowed under section 179A with respect to any property  
 21       with respect to which a credit is allowed under subsection  
 22       (a).

23           “(h) REFUELING PROPERTY INSTALLED FOR TAX-  
 24       EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-  
 25       hicle refueling property installed on property owned or

1 used by an entity exempt from tax under this chapter, the  
 2 person which installs such refueling property for the entity  
 3 shall be treated as the taxpayer with respect to the refuel-  
 4 ing property for purposes of this section (and such refuel-  
 5 ing property shall be treated as retail clean-fuel vehicle  
 6 refueling property) and the credit shall be allowed to such  
 7 person, but only if the person clearly discloses to the entity  
 8 in any installation contract the specific amount of the  
 9 credit allowable under this section.

10 “(i) CARRYFORWARD ALLOWED.—

11 “(1) IN GENERAL.—If the credit amount allow-  
 12 able under subsection (a) for a taxable year exceeds  
 13 the amount of the limitation under subsection (e) for  
 14 such taxable year (referred to as the ‘unused credit  
 15 year’ in this subsection), such excess shall be allowed  
 16 as a credit carryforward for each of the 20 taxable  
 17 years following the unused credit year.

18 “(2) RULES.—Rules similar to the rules of sec-  
 19 tion 39 shall apply with respect to the credit  
 20 carryforward under paragraph (1).

21 “(j) SPECIAL RULES.—Rules similar to the rules of  
 22 paragraphs (4) and (5) of section 179A(e) shall apply.

23 “(k) REGULATIONS.—The Secretary shall prescribe  
 24 such regulations as necessary to carry out the provisions  
 25 of this section.

1       “(l) TERMINATION.—This section shall not apply to  
2 any property placed in service—

3               “(1) in the case of property relating to hydro-  
4 gen, after December 31, 2011, and

5               “(2) in the case of any other property, after  
6 December 31, 2007.”.

7       (b) MODIFICATIONS TO EXTENSION OF DEDUCTION  
8 FOR CERTAIN REFUELING PROPERTY.—

9               (1) IN GENERAL.—Subsection (f) of section  
10 179A is amended to read as follows:

11       “(f) TERMINATION.—This section shall not apply to  
12 any property placed in service—

13               “(1) in the case of property relating to hydro-  
14 gen, after December 31, 2011, and

15               “(2) in the case of any other property, after  
16 December 31, 2007.”.

17       (2) EXTENSION OF PHASEOUT.—Section  
18 179A(b)(1)(B), as amended by section 606(a) of the  
19 Job Creation and Worker Assistance Act of 2002, is  
20 amended—

21               (A) by striking “calendar year 2004” in  
22 clause (i) and inserting “calendar years 2004  
23 and 2005 (calendar years 2004 through 2009  
24 in the case of property relating to hydrogen) ”,

1 (B) by striking “2005” in clause (ii) and  
 2 inserting “2006 (calendar year 2010 in the case  
 3 of property relating to hydrogen)”, and

4 (C) by striking “2006” in clause (iii) and  
 5 inserting “2007 (calendar year 2011 in the case  
 6 of property relating to hydrogen)”.

7 (c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT  
 8 QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-  
 9 erty.—Section 179A(d) (defining qualified clean-fuel ve-  
 10 hicle refueling property) is amended by adding at the end  
 11 the following new flush sentence:

12 “In the case of clean-burning fuel which is hydrogen pro-  
 13 duced from another clean-burning fuel, paragraph (3)(A)  
 14 shall be applied by substituting ‘production, storage, or  
 15 dispensing’ for ‘storage or dispensing’ both places it ap-  
 16 pears.”.

17 (d) CONFORMING AMENDMENTS.—(1) Section  
 18 1016(a), as amended by this Act, is amended by striking  
 19 “and” at the end of paragraph (28), by striking the period  
 20 at the end of paragraph (29) and inserting “, and”, and  
 21 by adding at the end the following new paragraph:

22 “(30) to the extent provided in section  
 23 30C(f).”.

24 (2) Section 55(c)(2), as amended by this Act, is  
 25 amended by inserting “30C(e),” after “30B(e)”.



1       (3) The table of sections for subpart B of part IV  
 2 of subchapter A of chapter 1, as amended by this Act,  
 3 is amended by inserting after the item relating to section  
 4 30B the following new item:

“Sec. 30C. Clean-fuel vehicle refueling property credit.”.

5       (e) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to property placed in service after  
 7 the date of the enactment of this Act, in taxable years  
 8 ending after such date.

9       **SEC. 204. CREDIT FOR RETAIL SALE OF ALTERNATIVE**  
 10                                   **FUELS AS MOTOR VEHICLE FUEL.**

11       (a) IN GENERAL.—Subpart D of part IV of sub-  
 12 chapter A of chapter 1 (relating to business related cred-  
 13 its) is amended by inserting after section 40 the following  
 14 new section:

15       **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**  
 16                                   **FUELS AS MOTOR VEHICLE FUEL.**

17       “(a) GENERAL RULE.—For purposes of section 38,  
 18 the alternative fuel retail sales credit for any taxable year  
 19 is the applicable amount for each gasoline gallon equiva-  
 20 lent of alternative fuel sold at retail by the taxpayer during  
 21 such year as a fuel to propel any qualified motor vehicle.

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

23               “(1) APPLICABLE AMOUNT.—The term ‘applica-  
 24 ble amount’ means the amount determined in ac-  
 25 cordance with the following table:

**“In the case of any taxable year  
ending in—**

**The applicable amount is—**

2003 .....	30 cents
2004 .....	40 cents
2005 and 2006 .....	50 cents.

1           “(2) ALTERNATIVE FUEL.—The term ‘alter-  
2       native fuel’ means compressed natural gas, liquefied  
3       natural gas, liquefied petroleum gas, hydrogen, and  
4       any liquid at least 85 percent of the volume of which  
5       consists of methanol or ethanol.

6           “(3) GASOLINE GALLON EQUIVALENT.—The  
7       term ‘gasoline gallon equivalent’ means, with respect  
8       to any alternative fuel, the amount (determined by  
9       the Secretary) of such fuel having a Btu content of  
10      114,000.

11          “(4) QUALIFIED MOTOR VEHICLE.—The term  
12      ‘qualified motor vehicle’ means any motor vehicle (as  
13      defined in section 30(c)(2)) which meets any appli-  
14      cable Federal or State emissions standards with re-  
15      spect to each fuel by which such vehicle is designed  
16      to be propelled.

17          “(5) SOLD AT RETAIL.—

18               “(A) IN GENERAL.—The term ‘sold at re-  
19      tail’ means the sale, for a purpose other than  
20      resale, after manufacture, production, or impor-  
21      tation.

22               “(B) USE TREATED AS SALE.—If any per-  
23      son uses alternative fuel (including any use

1           after importation) as a fuel to propel any quali-  
 2           fied alternative fuel motor vehicle (as defined in  
 3           section 30B(d)(4)) before such fuel is sold at  
 4           retail, then such use shall be treated in the  
 5           same manner as if such fuel were sold at retail  
 6           as a fuel to propel such a vehicle by such per-  
 7           son.

8           “(c) NO DOUBLE BENEFIT.—The amount of any de-  
 9           duction or other credit allowable under this chapter for  
 10          any fuel taken into account in computing the amount of  
 11          the credit determined under subsection (a) shall be re-  
 12          duced by the amount of such credit attributable to such  
 13          fuel.

14          “(d) PASS-THRU IN THE CASE OF ESTATES AND  
 15          TRUSTS.—Under regulations prescribed by the Secretary,  
 16          rules similar to the rules of subsection (d) of section 52  
 17          shall apply.

18          “(e) TERMINATION.—This section shall not apply to  
 19          any fuel sold at retail after December 31, 2006.”.

20          (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 21          tion 38(b) (relating to current year business credit) is  
 22          amended by striking “plus” at the end of paragraph (14),  
 23          by striking the period at the end of paragraph (15) and  
 24          inserting “, plus”, and by adding at the end the following  
 25          new paragraph:

1 “(16) the alternative fuel retail sales credit de-  
 2 termined under section 40A(a).”.

3 (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
 4 transitional rules) is amended by adding at the end the  
 5 following new paragraph:

6 “(11) NO CARRYBACK OF SECTION 40A CREDIT  
 7 BEFORE EFFECTIVE DATE.—No portion of the un-  
 8 used business credit for any taxable year which is  
 9 attributable to the alternative fuel retail sales credit  
 10 determined under section 40A(a) may be carried  
 11 back to a taxable year ending on or before the date  
 12 of the enactment of such section.”.

13 (d) CLERICAL AMENDMENT.—The table of sections  
 14 for subpart D of part IV of subchapter A of chapter 1  
 15 is amended by inserting after the item relating to section  
 16 40 the following new item:

“Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

17 (e) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to fuel sold at retail after the date  
 19 of the enactment of this Act, in taxable years ending after  
 20 such date.

21 **SEC. 205. SMALL ETHANOL PRODUCER CREDIT.**

22 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
 23 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to  
 24 alcohol used as fuel) is amended by adding at the end the  
 25 following new paragraph:

1           “(6) ALLOCATION OF SMALL ETHANOL PRO-  
 2       DUCER CREDIT TO PATRONS OF COOPERATIVE.—

3           “(A) ELECTION TO ALLOCATE.—

4               “(i) IN GENERAL.—In the case of a  
 5       cooperative organization described in sec-  
 6       tion 1381(a), any portion of the credit de-  
 7       termined under subsection (a)(3) for the  
 8       taxable year may, at the election of the or-  
 9       ganization, be apportioned pro rata among  
 10      patrons of the organization on the basis of  
 11      the quantity or value of business done with  
 12      or for such patrons for the taxable year.

13              “(ii) FORM AND EFFECT OF ELEC-  
 14      TION.—An election under clause (i) for any  
 15      taxable year shall be made on a timely  
 16      filed return for such year. Such election,  
 17      once made, shall be irrevocable for such  
 18      taxable year.

19           “(B) TREATMENT OF ORGANIZATIONS AND  
 20      PATRONS.—The amount of the credit appor-  
 21      tioned to patrons under subparagraph (A)—

22               “(i) shall not be included in the  
 23      amount determined under subsection (a)  
 24      with respect to the organization for the  
 25      taxable year,

1 “(ii) shall be included in the amount  
 2 determined under subsection (a) for the  
 3 taxable year of each patron for which the  
 4 patronage dividends for the taxable year  
 5 described in subparagraph (A) are included  
 6 in gross income, and

7 “(iii) shall be included in gross income  
 8 of such patrons for the taxable year in the  
 9 manner and to the extent provided in sec-  
 10 tion 87.

11 “(C) SPECIAL RULES FOR DECREASE IN  
 12 CREDITS FOR TAXABLE YEAR.—If the amount  
 13 of the credit of a cooperative organization de-  
 14 termined under subsection (a)(3) for a taxable  
 15 year is less than the amount of such credit  
 16 shown on the return of the cooperative organi-  
 17 zation for such year, an amount equal to the  
 18 excess of—

19 “(i) such reduction, over

20 “(ii) the amount not apportioned to  
 21 such patrons under subparagraph (A) for  
 22 the taxable year,

23 shall be treated as an increase in tax imposed  
 24 by this chapter on the organization. Such in-  
 25 crease shall not be treated as tax imposed by

1           this chapter for purposes of determining the  
 2           amount of any credit under this chapter or for  
 3           purposes of section 55.”.

4           (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER  
 5 CREDIT.—

6           (1) DEFINITION OF SMALL ETHANOL PRO-  
 7 DUCER.—Section 40(g) (relating to definitions and  
 8 special rules for eligible small ethanol producer cred-  
 9 it) is amended by striking “30,000,000” each place  
 10 it appears and inserting “60,000,000”.

11           (2) SMALL ETHANOL PRODUCER CREDIT NOT A  
 12 PASSIVE ACTIVITY CREDIT.—Clause (i) of section  
 13 469(d)(2)(A) is amended by striking “subpart D”  
 14 and inserting “subpart D, other than section  
 15 40(a)(3),”.

16           (3) ALLOWING CREDIT AGAINST ENTIRE REG-  
 17 ULAR TAX AND MINIMUM TAX.—

18           (A) IN GENERAL.—Subsection (c) of sec-  
 19 tion 38 (relating to limitation based on amount  
 20 of tax), as amended by section 301(b) of the  
 21 Job Creation and Worker Assistance Act of  
 22 2002, is amended by redesignating paragraph  
 23 (4) as paragraph (5) and by inserting after  
 24 paragraph (3) the following new paragraph:

1           “(4) SPECIAL RULES FOR SMALL ETHANOL  
2 PRODUCER CREDIT.—

3           “(A) IN GENERAL.—In the case of the  
4 small ethanol producer credit—

5           “(i) this section and section 39 shall  
6 be applied separately with respect to the  
7 credit, and

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

10           “(I) the amounts in subpara-  
11 graphs (A) and (B) thereof shall be  
12 treated as being zero, and

13           “(II) the limitation under para-  
14 graph (1) (as modified by subclause  
15 (I)) shall be reduced by the credit al-  
16 lowed under subsection (a) for the  
17 taxable year (other than the small  
18 ethanol producer credit).

19           “(B) SMALL ETHANOL PRODUCER CRED-  
20 IT.—For purposes of this subsection, the term  
21 ‘small ethanol producer credit’ means the credit  
22 allowable under subsection (a) by reason of sec-  
23 tion 40(a)(3).”.

24           “(B) CONFORMING AMENDMENTS.—Sub-  
25 clause (II) of section 38(c)(2)(A)(ii), as amend-



1           ed by section 301(b)(2) of the Job Creation and  
 2           Worker Assistance Act of 2002, and subclause  
 3           (II) of section 38(c)(3)(A)(ii), as added by sec-  
 4           tion 301(b)(1) of such Act, are each amended  
 5           by inserting “or the small ethanol producer  
 6           credit” after “employee credit”.

7           (4) SMALL ETHANOL PRODUCER CREDIT NOT  
 8           ADDED BACK TO INCOME UNDER SECTION 87.—Sec-  
 9           tion 87 (relating to income inclusion of alcohol fuel  
 10          credit) is amended to read as follows:

11   **“SEC. 87. ALCOHOL FUEL CREDIT.**

12          “Gross income includes an amount equal to the sum  
 13   of—

14           “(1) the amount of the alcohol mixture credit  
 15          determined with respect to the taxpayer for the tax-  
 16          able year under section 40(a)(1), and

17           “(2) the alcohol credit determined with respect  
 18          to the taxpayer for the taxable year under section  
 19          40(a)(2).”.

20          (c) CONFORMING AMENDMENT.—Section 1388 (re-  
 21          lating to definitions and special rules for cooperative orga-  
 22          nizations) is amended by adding at the end the following  
 23          new subsection:

24           “(k) CROSS REFERENCE.—For provisions relating to  
 25          the apportionment of the alcohol fuels credit between coop-

1 erative organizations and their patrons, see section  
2 40(g)(6).”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 the date of the enactment of this Act.

6 **SEC. 206. ALL ALCOHOL FUELS TAXES TRANSFERRED TO**  
7 **HIGHWAY TRUST FUND.**

8 (a) IN GENERAL.—Section 9503(b)(4) (relating to  
9 certain taxes not transferred to Highway Trust Fund) is  
10 amended—

11 (1) by adding “or” at the end of subparagraph  
12 (C),

13 (2) by striking the comma at the end of sub-  
14 paragraph (D)(iii) and inserting a period, and

15 (3) by striking subparagraphs (E) and (F).

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to taxes imposed after September  
18 30, 2003.

19 **SEC. 207. INCREASED FLEXIBILITY IN ALCOHOL FUELS TAX**  
20 **CREDIT.**

21 (a) ALCOHOL FUELS CREDIT MAY BE TRANS-  
22 FERRED.—Section 40 (relating to alcohol used as fuel) is  
23 amended by adding at the end the following new sub-  
24 section:

25 “(i) CREDIT MAY BE TRANSFERRED.—

1           “(1) IN GENERAL.—A taxpayer may transfer  
 2           any credit allowable under paragraph (1) or (2) of  
 3           subsection (a) with respect to alcohol used in the  
 4           production of ethyl tertiary butyl ether through an  
 5           assignment to a qualified assignee. Such transfer  
 6           may be revoked only with the consent of the Sec-  
 7           retary.

8           “(2) QUALIFIED ASSIGNEE.—For purposes of  
 9           this subsection, the term ‘qualified assignee’ means  
 10          any person who—

11                   “(A) is liable for taxes imposed under sec-  
 12                   tion 4081,

13                   “(B) is required to register under section  
 14                   4101, and

15                   “(C) obtains a certificate from the tax-  
 16                   payer described in paragraph (1) which identi-  
 17                   fies the amount of alcohol used in such produc-  
 18                   tion.

19           “(3) REGULATIONS.—The Secretary shall pre-  
 20           scribe such regulations as necessary to insure that  
 21           any credit described in paragraph (1) is claimed  
 22           once and not reassigned by a qualified assignee.”.

23          (b) ALCOHOL FUELS CREDIT MAY BE TAKEN  
 24          AGAINST MOTOR FUELS TAX LIABILITY.—

1           (1) IN GENERAL.—Subpart C of part III of  
 2           subchapter A of chapter 32 (relating to special pro-  
 3           visions applicable to petroleum products) is amended  
 4           by adding at the end the following new section:

5   **“SEC. 4104. CREDIT AGAINST MOTOR FUELS TAXES.**

6           “(a) ELECTION TO USE CREDIT AGAINST MOTOR  
 7   FUELS TAXES.—There is hereby allowed as a credit  
 8   against the taxes imposed by section 4081, any credit al-  
 9   lowed under paragraph (1) or (2) of section 40(a) with  
 10   respect to alcohol used in the production of ethyl tertiary  
 11   butyl ether to the extent—

12           “(1) such credit is not claimed by the taxpayer  
 13           or the qualified assignee under section 40(i) as a  
 14           credit under section 40, and

15           “(2) the taxpayer or qualified assignee elects to  
 16           claim such credit under this section.

17           “(b) ELECTION IRREVOCABLE.—Any election under  
 18   subsection (a) shall be irrevocable.

19           “(c) REQUIRED STATEMENT.—Any return claiming  
 20   a credit pursuant to an election under this section shall  
 21   be accompanied by a statement that the credit was not,  
 22   and will not, be claimed on an income tax return.

23           “(d) REGULATIONS.—The Secretary shall prescribe  
 24   such regulations as necessary to avoid the claiming of dou-

1 ble benefits and to prescribe the taxable periods with re-  
 2 spect to which the credit may be claimed.”.

3 (2) CONFORMING AMENDMENT.—Section 40(c)  
 4 is amended by striking “or section 4091(c)” and in-  
 5 serting “section 4091(c), or section 4104”.

6 (3) CLERICAL AMENDMENT.—The table of sec-  
 7 tions for subpart C of part III of subchapter A of  
 8 chapter 32 is amended by adding at the end the fol-  
 9 lowing new item:

“Sec. 4104. Credit against motor fuels taxes.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall take effect on and after the date of the  
 12 enactment of this Act.

13 **SEC. 208. INCENTIVES FOR BIODIESEL.**

14 (a) CREDIT FOR BIODIESEL USED AS A FUEL.—

15 (1) IN GENERAL.—Subpart D of part IV of  
 16 subchapter A of chapter 1 (relating to business re-  
 17 lated credits), as amended by this Act, is amended  
 18 by inserting after section 40A the following new sec-  
 19 tion:

20 **“SEC. 40B. BIODIESEL USED AS FUEL.**

21 “(a) GENERAL RULE.—For purposes of section 38,  
 22 the biodiesel fuels credit determined under this section for  
 23 the taxable year is an amount equal to the biodiesel mix-  
 24 ture credit.

1       “(b) DEFINITION OF BIODIESEL MIXTURE CRED-  
2 IT.—For purposes of this section—

3               “(1) BIODIESEL MIXTURE CREDIT.—

4                       “(A) IN GENERAL.—The biodiesel mixture  
5 credit of any taxpayer for any taxable year is  
6 the sum of the products of the biodiesel mixture  
7 rate for each qualified biodiesel mixture and the  
8 number of gallons of such mixture of the tax-  
9 payer for the taxable year.

10                      “(B) BIODIESEL MIXTURE RATE.—For  
11 purposes of subparagraph (A), the biodiesel  
12 mixture rate for each qualified biodiesel mixture  
13 shall be—

14                               “(i) in the case of a mixture with only  
15 biodiesel V, 1 cent for each whole percent-  
16 age point (not exceeding 20 percentage  
17 points) of biodiesel V in such mixture, and

18                               “(ii) in the case of a mixture with bio-  
19 diesel NV, or a combination of biodiesel V  
20 and biodiesel NV, 0.5 cent for each whole  
21 percentage point (not exceeding 20 per-  
22 centage points) of such biodiesel in such  
23 mixture.

24               “(2) QUALIFIED BIODIESEL MIXTURE.—

1           “(A) IN GENERAL.—The term ‘qualified  
2           biodiesel mixture’ means a mixture of diesel  
3           and biodiesel V or biodiesel NV which—

4                   “(i) is sold by the taxpayer producing  
5                   such mixture to any person for use as a  
6                   fuel, or

7                   “(ii) is used as a fuel by the taxpayer  
8                   producing such mixture.

9           “(B) SALE OR USE MUST BE IN TRADE OR  
10          BUSINESS, ETC.—

11                   “(i) IN GENERAL.—Biodiesel V or bio-  
12                   diesel NV used in the production of a  
13                   qualified biodiesel mixture shall be taken  
14                   into account—

15                           “(I) only if the sale or use de-  
16                           scribed in subparagraph (A) is in a  
17                           trade or business of the taxpayer, and

18                           “(II) for the taxable year in  
19                           which such sale or use occurs.

20                   “(ii) CERTIFICATION FOR BIODIESEL  
21                   v.—Biodiesel V used in the production of  
22                   a qualified biodiesel mixture shall be taken  
23                   into account only if the taxpayer described  
24                   in subparagraph (A) obtains a certification

1 from the producer of the biodiesel V which  
 2 identifies the product produced.

3 “(C) CASUAL OFF-FARM PRODUCTION NOT  
 4 ELIGIBLE.—No credit shall be allowed under  
 5 this section with respect to any casual off-farm  
 6 production of a qualified biodiesel mixture.

7 “(c) COORDINATION WITH EXEMPTION FROM EX-  
 8 CISE TAX.—The amount of the credit determined under  
 9 this section with respect to any biodiesel V shall, under  
 10 regulations prescribed by the Secretary, be properly re-  
 11 duced to take into account any benefit provided with re-  
 12 spect to such biodiesel V solely by reason of the application  
 13 of section 4041(n) or section 4081(f).

14 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
 15 poses of this section—

16 “(1) BIODIESEL V DEFINED.—The term ‘bio-  
 17 diesel V’ means the monoalkyl esters of long chain  
 18 fatty acids derived solely from virgin vegetable oils  
 19 for use in compressional-ignition (diesel) engines.  
 20 Such term shall include esters derived from vege-  
 21 table oils from corn, soybeans, sunflower seeds, cot-  
 22 tonseeds, canola, crambe, rapeseeds, safflowers,  
 23 flaxseeds, rice bran, and mustard seeds.

24 “(2) BIODIESEL NV DEFINED.—The term ‘bio-  
 25 diesel NV’ means the monoalkyl esters of long chain



1 fatty acids derived from nonvirgin vegetable oils or  
 2 animal fats for use in compressional-ignition (diesel)  
 3 engines.

4 “(3) REGISTRATION REQUIREMENTS.—The  
 5 terms ‘biodiesel V’ and ‘biodiesel NV’ shall only in-  
 6 clude a biodiesel which meets—

7 “(i) the registration requirements for  
 8 fuels and fuel additives established by the  
 9 Environmental Protection Agency under  
 10 section 211 of the Clean Air Act (42  
 11 U.S.C. 7545), and

12 “(ii) the requirements of the Amer-  
 13 ican Society of Testing and Materials  
 14 D6751.

15 “(2) BIODIESEL MIXTURE NOT USED AS A  
 16 FUEL, ETC.—

17 “(A) IMPOSITION OF TAX.—If—

18 “(i) any credit was determined under  
 19 this section with respect to biodiesel V or  
 20 biodiesel NV used in the production of any  
 21 qualified biodiesel mixture, and

22 “(ii) any person—

23 “(I) separates such biodiesel  
 24 from the mixture, or

1 “(II) without separation, uses the  
 2 mixture other than as a fuel,  
 3 then there is hereby imposed on such per-  
 4 son a tax equal to the product of the bio-  
 5 diesel mixture rate applicable under sub-  
 6 section (b)(1)(B) and the number of gal-  
 7 lons of the mixture.

8 “(B) APPLICABLE LAWS.—All provisions of  
 9 law, including penalties, shall, insofar as appli-  
 10 cable and not inconsistent with this section,  
 11 apply in respect of any tax imposed under sub-  
 12 paragraph (A) as if such tax were imposed by  
 13 section 4081 and not by this chapter.

14 “(3) PASS-THRU IN THE CASE OF ESTATES AND  
 15 TRUSTS.—Under regulations prescribed by the Sec-  
 16 retary, rules similar to the rules of subsection (d) of  
 17 section 52 shall apply.

18 “(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT  
 19 NOT APPLY.—

20 “(1) IN GENERAL.—A taxpayer may elect to  
 21 have this section not apply for any taxable year.

22 “(2) TIME FOR MAKING ELECTION.—An elec-  
 23 tion under paragraph (1) for any taxable year may  
 24 be made (or revoked) at any time before the expira-  
 25 tion of the 3-year period beginning on the last date

1       prescribed by law for filing the return for such tax-  
2       able year (determined without regard to extensions).

3               “(3) MANNER OF MAKING ELECTION.—An elec-  
4       tion under paragraph (1) (or revocation thereof)  
5       shall be made in such manner as the Secretary may  
6       by regulations prescribe.”.

7               “(f) TERMINATION.—This section shall not apply to  
8       any fuel sold after December 31, 2005.”.

9               (2) CREDIT TREATED AS PART OF GENERAL  
10       BUSINESS CREDIT.—Section 38(b), as amended by  
11       this Act, is amended by striking “plus” at the end  
12       of paragraph (15), by striking the period at the end  
13       of paragraph (16) and inserting “, plus”, and by  
14       adding at the end the following new paragraph:

15               “(17) the biodiesel fuels credit determined  
16       under section 40B(a).”.

17               (3) CONFORMING AMENDMENTS.—

18               (A) Section 39(d), as amended by this Act,  
19       is amended by adding at the end the following  
20       new paragraph:

21               “(12) NO CARRYBACK OF BIODIESEL FUELS  
22       CREDIT BEFORE JANUARY 1, 2003.—No portion of  
23       the unused business credit for any taxable year  
24       which is attributable to the biodiesel fuels credit de-

1       terminated under section 40B may be carried back to  
2       a taxable year beginning before January 1, 2003.”.

3               (B) Section 196(c) is amended by striking  
4       “and” at the end of paragraph (9), by striking  
5       the period at the end of paragraph (10), and by  
6       adding at the end the following new paragraph:  
7       “(11) the biodiesel fuels credit determined  
8       under section 40B(a).”.

9               (C) Section 6501(m), as amended by this  
10       Act, is amended by inserting “40B(e),” after  
11       “40(f),”.

12              (D) The table of sections for subpart D of  
13       part IV of subchapter A of chapter 1, as  
14       amended by this Act, is amended by adding  
15       after the item relating to section 40A the fol-  
16       lowing new item:

      “Sec. 40B. Biodiesel used as fuel.”.

17              (4) EFFECTIVE DATE.—The amendments made  
18       by this subsection shall apply to taxable years begin-  
19       ning after December 31, 2002.

20       (b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON  
21       BIODIESEL V MIXTURES.—

22              (1) IN GENERAL.—Section 4081 (relating to  
23       manufacturers tax on petroleum products) is amend-  
24       ed by adding at the end the following new sub-  
25       section:

1       “(f) BIODIESEL V MIXTURES.—Under regulations  
2 prescribed by the Secretary—

3               “(1) IN GENERAL.—In the case of the removal  
4 or entry of a qualified biodiesel mixture with bio-  
5 diesel V, the rate of tax under subsection (a) shall  
6 be the otherwise applicable rate reduced by the bio-  
7 diesel mixture rate (if any) applicable to the mix-  
8 ture.

9               “(2) TAX PRIOR TO MIXING.—

10               “(A) IN GENERAL.—In the case of the re-  
11 moval or entry of diesel fuel for use in pro-  
12 ducing at the time of such removal or entry a  
13 qualified biodiesel mixture with biodiesel V, the  
14 rate of tax under subsection (a) shall be the  
15 rate determined under subparagraph (B).

16               “(B) DETERMINATION OF RATE.—For  
17 purposes of subparagraph (A), the rate deter-  
18 mined under this subparagraph is the rate de-  
19 termined under paragraph (1), divided by a per-  
20 centage equal to 100 percent minus the per-  
21 centage of biodiesel V which will be in the mix-  
22 ture.

23               “(3) DEFINITIONS.—For purposes of this sub-  
24 section, any term used in this subsection which is

1       also used in section 40B shall have the meaning  
2       given such term by section 40B.

3               “(4) CERTAIN RULES TO APPLY.—Rules similar  
4       to the rules of paragraphs (6) and (7) of subsection  
5       (c) shall apply for purposes of this subsection.”.

6               (2) CONFORMING AMENDMENTS.—

7               (A) Section 4041 is amended by adding at  
8       the end the following new subsection:

9       “(n) BIODIESEL V MIXTURES.—Under regulations  
10      prescribed by the Secretary, in the case of the sale or use  
11      of a qualified biodiesel mixture (as defined in section  
12      40B(b)(2)) with biodiesel V, the rates under paragraphs  
13      (1) and (2) of subsection (a) shall be the otherwise appli-  
14      cable rates, reduced by any applicable biodiesel mixture  
15      rate (as defined in section 40B(b)(1)(B)).”.

16              (B) Section 6427 is amended by redesign-  
17      nating subsection (p) as subsection (q) and by  
18      inserting after subsection (o) the following new  
19      subsection:

20      “(p) BIODIESEL V MIXTURES.—Except as provided  
21      in subsection (k), if any diesel fuel on which tax was im-  
22      posed by section 4081 at a rate not determined under sec-  
23      tion 4081(f) is used by any person in producing a qualified  
24      biodiesel mixture (as defined in section 40B(b)(2)) with  
25      biodiesel V which is sold or used in such person’s trade

1 or business, the Secretary shall pay (without interest) to  
 2 such person an amount equal to the per gallon applicable  
 3 biodiesel mixture rate (as defined in section 40B(b)(1)(B))  
 4 with respect to such fuel.”.

5 (3) EFFECTIVE DATE.—The amendments made  
 6 by this subsection shall apply to any fuel sold after  
 7 the date of the enactment of this Act, and before  
 8 January 1, 2006.

9 (c) HIGHWAY TRUST FUND HELD HARMLESS.—  
 10 There are hereby transferred (from time to time) from the  
 11 funds of the Commodity Credit Corporation amounts de-  
 12 termined by the Secretary of the Treasury to be equivalent  
 13 to the reductions that would occur (but for this sub-  
 14 section) in the receipts of the Highway Trust Fund by  
 15 reason of the amendments made by this section.

16 **SEC. 209. CREDIT FOR TAXPAYERS OWNING COMMERCIAL**  
 17 **POWER TAKEOFF VEHICLES.**

18 (a) IN GENERAL.—Subpart D of part IV of sub-  
 19 chapter A of chapter 1 (relating to business-related cred-  
 20 its), as amended by section 703, is amended by adding  
 21 at the end the following new section:

22 **“SEC. 45N. COMMERCIAL POWER TAKEOFF VEHICLES**  
 23 **CREDIT.**

24 “(a) GENERAL RULE.—For purposes of section 38,  
 25 the amount of the commercial power takeoff vehicles credit

1 determined under this section for the taxable year is \$250  
 2 for each qualified commercial power takeoff vehicle owned  
 3 by the taxpayer as of the close of the calendar year in  
 4 which or with which the taxable year of the taxpayer ends.

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

6 “(1) QUALIFIED COMMERCIAL POWER TAKEOFF  
 7 VEHICLE.—The term ‘qualified commercial power  
 8 takeoff vehicle’ means any highway vehicle described  
 9 in paragraph (2) which is propelled by any fuel sub-  
 10 ject to tax under section 4041 or 4081 if such vehi-  
 11 cle is used in a trade or business or for the produc-  
 12 tion of income (and is licensed and insured for such  
 13 use).

14 “(2) HIGHWAY VEHICLE DESCRIBED.—A high-  
 15 way vehicle is described in this paragraph if such ve-  
 16 hicle is—

17 “(A) designed to engage in the daily collec-  
 18 tion of refuse or recyclables from homes or  
 19 businesses and is equipped with a mechanism  
 20 under which the vehicle’s propulsion engine pro-  
 21 vides the power to operate a load compactor, or

22 “(B) designed to deliver ready mixed con-  
 23 crete on a daily basis and is equipped with a  
 24 mechanism under which the vehicle’s propulsion  
 25 engine provides the power to operate a mixer



1           drum to agitate and mix the product en route  
2           to the delivery site.

3           “(c) EXCEPTION FOR VEHICLES USED BY GOVERN-  
4 MENTS, ETC.—No credit shall be allowed under this sec-  
5 tion for any vehicle owned by any person at the close of  
6 a calendar year if such vehicle is used at any time during  
7 such year by—

8           “(1) the United States or an agency or instru-  
9 mentality thereof, a State, a political subdivision of  
10 a State, or an agency or instrumentality of one or  
11 more States or political subdivisions, or

12           “(2) an organization exempt from tax under  
13 section 501(a).

14           “(d) DENIAL OF DOUBLE BENEFIT.—The amount of  
15 any deduction under this subtitle for any tax imposed by  
16 subchapter B of chapter 31 or part III of subchapter A  
17 of chapter 32 for any taxable year shall be reduced (but  
18 not below zero) by the amount of the credit determined  
19 under this subsection for such taxable year.

20           “(e) TERMINATION.—This section shall not apply  
21 with respect to any calendar year after 2004.”.

22           (b) CREDIT MADE PART OF GENERAL BUSINESS  
23 CREDIT.—Subsection (b) of section 38 (relating to general  
24 business credit), as amended by section 703, is amended  
25 by striking “plus” at the end of paragraph (23), by strik-

1 ing the period at the end of paragraph (24) and inserting  
 2 “, plus”, and by adding at the end the following new para-  
 3 graph:

4 “(25) the commercial power takeoff vehicles  
 5 credit under section 45N(a).”.

6 (c) CLERICAL AMENDMENT.—The table of sections  
 7 for subpart D of part IV of subchapter A of chapter 1,  
 8 as amended by section 703, is amended by adding at the  
 9 end the following new item:

“Sec. 45N. Commercial power takeoff vehicles credit.”.

10 (d) REGULATIONS.—Not later than January 1, 2005,  
 11 the Secretary of the Treasury, in consultation with the  
 12 Secretary of Energy, shall by regulation provide for the  
 13 method of determining the exemption from any excise tax  
 14 imposed under section 4041 or 4081 of the Internal Rev-  
 15 enue Code of 1986 on fuel used through a mechanism to  
 16 power equipment attached to a highway vehicle as de-  
 17 scribed in section 45N(b)(2) of such Code, as added by  
 18 subsection (a).

19 (e) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to taxable years beginning after  
 21 the date of the enactment of this Act.

1 **TITLE III—CONSERVATION AND**  
 2 **ENERGY EFFICIENCY PROVI-**  
 3 **SIONS**

4 **SEC. 301. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**  
 5 **FICIENT HOME.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-  
 7 chapter A of chapter 1 (relating to business related cred-  
 8 its), as amended by this Act, is amended by adding at  
 9 the end the following new section:

10 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

11 “(a) IN GENERAL.—For purposes of section 38, in  
 12 the case of an eligible contractor, the credit determined  
 13 under this section for the taxable year is an amount equal  
 14 to the aggregate adjusted bases of all energy efficient  
 15 property installed in a qualifying new home during con-  
 16 struction of such home.

17 “(b) LIMITATIONS.—

18 “(1) MAXIMUM CREDIT.—

19 “(A) IN GENERAL.—The credit allowed by  
 20 this section with respect to a qualifying new  
 21 home shall not exceed—

22 “(i) in the case of a 30-percent home,  
 23 \$1,250, and

24 “(ii) in the case of a 50-percent home,  
 25 \$2,000.

1           “(B) 30- OR 50-PERCENT HOME.—For pur-  
2           poses of subparagraph (A)—

3           “(i) 30-PERCENT HOME.—The term  
4           ‘30-percent home’ means a qualifying new  
5           home which is certified to have a projected  
6           level of annual heating and cooling energy  
7           consumption, measured in terms of aver-  
8           age annual energy cost to the homeowner,  
9           which is at least 30 percent less than the  
10          annual level of heating and cooling energy  
11          consumption of a reference qualifying new  
12          home constructed in accordance with the  
13          standards of chapter 4 of the 2000 Inter-  
14          national Energy Conservation Code, or a  
15          qualifying new home which is a manufac-  
16          tured home which meets the applicable  
17          standards of the Energy Star program  
18          managed jointly by the Environmental  
19          Protection Agency and the Department of  
20          Energy.

21          “(ii) 50-PERCENT HOME.—The term  
22          ‘50-percent home’ means a qualifying new  
23          home which is certified to have a projected  
24          level of annual heating and cooling energy  
25          consumption, measured in terms of aver-

1           age annual energy cost to the homeowner,  
2           which is at least 50 percent less than such  
3           annual level of heating and cooling energy  
4           consumption.

5           “(C) PRIOR CREDIT AMOUNTS ON SAME  
6           HOME TAKEN INTO ACCOUNT.—If a credit was  
7           allowed under subsection (a) with respect to a  
8           qualifying new home in 1 or more prior taxable  
9           years, the amount of the credit otherwise allow-  
10          able for the taxable year with respect to that  
11          home shall not exceed the amount under clause  
12          (i) or (ii) of subparagraph (A) (as the case may  
13          be), reduced by the sum of the credits allowed  
14          under subsection (a) with respect to the home  
15          for all prior taxable years.

16          “(2) COORDINATION WITH REHABILITATION  
17          AND ENERGY CREDITS.—For purposes of this sec-  
18          tion—

19               “(A) the basis of any property referred to  
20               in subsection (a) shall be reduced by that por-  
21               tion of the basis of any property which is attrib-  
22               utable to the rehabilitation credit (as deter-  
23               mined under section 47(a)) or to the energy  
24               percentage of energy property (as determined  
25               under section 48(a)), and

1           “(B) expenditures taken into account  
2           under either section 47 or 48(a) shall not be  
3           taken into account under this section.

4           “(c) DEFINITIONS.—For purposes of this section—

5           “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-  
6           ble contractor’ means the person who constructed  
7           the qualifying new home, or in the case of a manu-  
8           factured home which conforms to Federal Manufac-  
9           tured Home Construction and Safety Standards (24  
10          C.F.R. 3280), the manufactured home producer of  
11          such home.

12          “(2) ENERGY EFFICIENT PROPERTY.—The  
13          term ‘energy efficient property’ means any energy  
14          efficient building envelope component, and any en-  
15          ergy efficient heating or cooling equipment which  
16          can, individually or in combination with other com-  
17          ponents, meet the requirements of this section.

18          “(3) QUALIFYING NEW HOME.—The term  
19          ‘qualifying new home’ means a dwelling—

20                 “(A) located in the United States,

21                 “(B) the construction of which is substan-  
22                 tially completed after the date of the enactment  
23                 of this section, and

1           “(C) the first use of which after construc-  
 2           tion is as a principal residence (within the  
 3           meaning of section 121).

4           “(4) CONSTRUCTION.—The term ‘construction’  
 5           includes reconstruction and rehabilitation.

6           “(5) BUILDING ENVELOPE COMPONENT.—The  
 7           term ‘building envelope component’ means—

8                 “(A) any insulation material or system  
 9                 which is specifically and primarily designed to  
 10                reduce the heat loss or gain of a qualifying new  
 11                home when installed in or on such home, and

12               “(B) exterior windows (including skylights)  
 13               and doors.

14           “(6) MANUFACTURED HOME INCLUDED.—The  
 15           term ‘qualifying new home’ includes a manufactured  
 16           home conforming to Federal Manufactured Home  
 17           Construction and Safety Standards (24 C.F.R.  
 18           3280).

19           “(d) CERTIFICATION.—

20                 “(1) METHOD OF CERTIFICATION.—

21                 “(A) IN GENERAL.—A certification de-  
 22                 scribed in subsection (b)(1)(B) shall be deter-  
 23                 mined either by a component-based method or  
 24                 a performance-based method.

1           “(B) COMPONENT-BASED METHOD.—A  
 2           component-based method is a method which  
 3           uses the applicable technical energy efficiency  
 4           specifications or ratings (including product la-  
 5           beling requirements) for the energy efficient  
 6           building envelope component or energy efficient  
 7           heating or cooling equipment. The Secretary  
 8           shall, in consultation with the Administrator of  
 9           the Environmental Protection Agency, develop  
 10          prescriptive component-based packages that are  
 11          equivalent in energy performance to properties  
 12          that qualify under subparagraph (C).

13           “(C) PERFORMANCE-BASED METHOD.—

14           “(i) IN GENERAL.—A performance-  
 15          based method is a method which calculates  
 16          projected energy usage and cost reductions  
 17          in the qualifying new home in relation to  
 18          a reference qualifying new home—

19                   “(I) heated by the same energy  
 20                   source and heating system type, and

21                   “(II) constructed in accordance  
 22                   with the standards of chapter 4 of the  
 23                   2000 International Energy Conserva-  
 24                   tion Code.



1                   “(ii) COMPUTER SOFTWARE.—Com-  
 2                   puter software shall be used in support of  
 3                   a performance-based method certification  
 4                   under clause (i). Such software shall meet  
 5                   procedures and methods for calculating en-  
 6                   ergy and cost savings in regulations pro-  
 7                   mulgated by the Secretary of Energy. Such  
 8                   regulations on the specifications for soft-  
 9                   ware and verification protocols shall be  
 10                  based on the 2001 California Residential  
 11                  Alternative Calculation Method Approval  
 12                  Manual.

13               “(2) PROVIDER.—A certification described in  
 14               subsection (b)(1)(B) shall be provided by—

15                   “(A) in the case of a component-based  
 16                   method, a local building regulatory authority, a  
 17                   utility, a manufactured home production inspec-  
 18                   tion primary inspection agency (IPIA), or a  
 19                   home energy rating organization, or

20                   “(B) in the case of a performance-based  
 21                   method, an individual recognized by an organi-  
 22                   zation designated by the Secretary for such  
 23                   purposes.

24               “(3) FORM.—

1           “(A) IN GENERAL.—A certification de-  
2           scribed in subsection (b)(1)(B) shall be made in  
3           writing in a manner that specifies in readily  
4           verifiable fashion the energy efficient building  
5           envelope components and energy efficient heat-  
6           ing or cooling equipment installed and their re-  
7           spective rated energy efficiency performance,  
8           and in the case of a performance-based method,  
9           accompanied by a written analysis documenting  
10          the proper application of a permissible energy  
11          performance calculation method to the specific  
12          circumstances of such qualifying new home.

13          “(B) FORM PROVIDED TO BUYER.—A form  
14          documenting the energy efficient building enve-  
15          lope components and energy efficient heating or  
16          cooling equipment installed and their rated en-  
17          ergy efficiency performance shall be provided to  
18          the buyer of the qualifying new home. The form  
19          shall include labeled R-value for insulation  
20          products, NFRC-labeled U-factor and Solar  
21          Heat Gain Coefficient for windows, skylights,  
22          and doors, labeled AFUE ratings for furnaces  
23          and boilers, labeled HSPF ratings for electric  
24          heat pumps, and labeled SEER ratings for air  
25          conditioners.

“(C) RATINGS LABEL AFFIXED IN DWELL-  
 ING.—A permanent label documenting the rat-  
 ings in subparagraph (B) shall be affixed to the  
 front of the electrical distribution panel of the  
 qualifying new home, or shall be otherwise per-  
 manently displayed in a readily inspectable loca-  
 tion in such home.

“(4) REGULATIONS.—

“(A) IN GENERAL.—In prescribing regula-  
 tions under this subsection for performance-  
 based certification methods, the Secretary, after  
 examining the requirements for energy consult-  
 ants and home energy ratings providers speci-  
 fied by the Mortgage Industry National Accred-  
 itation Procedures for Home Energy Rating  
 Systems, shall prescribe procedures for calcu-  
 lating annual energy usage and cost reductions  
 for heating and cooling and for the reporting of  
 the results. Such regulations shall—

“(i) provide that any calculation pro-  
 cedures be fuel neutral such that the same  
 energy efficiency measures allow a quali-  
 fying new home to be eligible for the credit  
 under this section regardless of whether

1           such home uses a gas or oil furnace or  
2           boiler or an electric heat pump, and

3           “(ii) require that any computer soft-  
4           ware allow for the printing of the Federal  
5           tax forms necessary for the credit under  
6           this section and for the printing of forms  
7           for disclosure to the homebuyer.

8           “(B) PROVIDERS.—For purposes of para-  
9           graph (2)(B), the Secretary shall establish re-  
10          quirements for the designation of individuals  
11          based on the requirements for energy consult-  
12          ants and home energy raters specified by the  
13          Mortgage Industry National Accreditation Pro-  
14          cedures for Home Energy Rating Systems.

15          “(e) TERMINATION.—Subsection (a) shall apply to  
16          qualifying new homes purchased during the period begin-  
17          ning on the date of the enactment of this section and end-  
18          ing on December 31, 2007.”.

19          (b) CREDIT MADE PART OF GENERAL BUSINESS  
20          CREDIT.—Subsection (b) of section 38 (relating to current  
21          year business credit), as amended by this Act, is amended  
22          by striking “plus” at the end of paragraph (16), by strik-  
23          ing the period at the end of paragraph (17) and inserting  
24          “, plus”, and by adding at the end the following new para-  
25          graph:

1           “(18) the new energy efficient home credit de-  
2           termined under section 45G(a).”.

3           (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
4           (relating to certain expenses for which credits are allow-  
5           able) is amended by adding at the end the following new  
6           subsection:

7           “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—  
8           No deduction shall be allowed for that portion of expenses  
9           for a qualifying new home otherwise allowable as a deduc-  
10          tion for the taxable year which is equal to the amount  
11          of the credit determined for such taxable year under sec-  
12          tion 45G(a).”.

13          (d) LIMITATION ON CARRYBACK.—Subsection (d) of  
14          section 39, as amended by this Act, is amended by adding  
15          at the end the following new paragraph:

16               “(13) NO CARRYBACK OF NEW ENERGY EFFI-  
17               CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—  
18               No portion of the unused business credit for any  
19               taxable year which is attributable to the credit deter-  
20               mined under section 45G may be carried back to any  
21               taxable year ending on or before the date of the en-  
22               actment of such section.”.

23          (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS  
24          CREDITS.—Subsection (c) of section 196, as amended by  
25          this Act, is amended by striking “and” at the end of para-

1 graph (10), by striking the period at the end of paragraph  
 2 (11) and inserting “, and”, and by adding after paragraph  
 3 (11) the following new paragraph:

4 “(12) the new energy efficient home credit de-  
 5 termined under section 45G(a).”.

6 (f) CLERICAL AMENDMENT.—The table of sections  
 7 for subpart D of part IV of subchapter A of chapter 1,  
 8 as amended by this Act, is amended by adding at the end  
 9 the following new item:

“Sec. 45G. New energy efficient home credit.”.

10 (g) 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.

13 **SEC. 302. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-  
 15 chapter A of chapter 1 (relating to business-related cred-  
 16 its), as amended by this Act, is amended by adding at  
 17 the end the following new section:

18 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

19 “(a) GENERAL RULE.—For purposes of section 38,  
 20 the energy efficient appliance credit determined under this  
 21 section for the taxable year is an amount equal to the ap-  
 22 plicable amount determined under subsection (b) with re-  
 23 spect to the eligible production of qualified energy efficient  
 24 appliances produced by the taxpayer during the calendar  
 25 year ending with or within the taxable year.

1       “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-  
2 TION.—For purposes of subsection (a)—

3               “(1) APPLICABLE AMOUNT.—The applicable  
4 amount is—

5                       “(A) \$50, in the case of—

6                               “(i) a clothes washer which is manu-  
7 factured with at least a 1.26 MEF, or

8                               “(ii) a refrigerator which consumes at  
9 least 10 percent less kWh per year than  
10 the energy conservation standards for re-  
11 frigerators promulgated by the Department  
12 of Energy effective July 1, 2001, and

13                       “(B) \$100, in the case of—

14                               “(i) a clothes washer which is manu-  
15 factured with at least a 1.42 MEF (at  
16 least 1.5 MEF for washers produced after  
17 2004), or

18                               “(ii) a refrigerator which consumes at  
19 least 15 percent less kWh per year than  
20 such energy conservation standards.

21               “(2) ELIGIBLE PRODUCTION.—

22                       “(A) IN GENERAL.—The eligible produc-  
23 tion of each category of qualified energy effi-  
24 cient appliances is the excess of—

1 “(i) the number of appliances in such  
 2 category which are produced by the tax-  
 3 payer during such calendar year, over

4 “(ii) the average number of appliances  
 5 in such category which were produced by  
 6 the taxpayer during calendar years 2000,  
 7 2001, and 2002.

8 “(B) CATEGORIES.—For purposes of sub-  
 9 paragraph (A), the categories are—

10 “(i) clothes washers described in para-  
 11 graph (1)(A)(i),

12 “(ii) clothes washers described in  
 13 paragraph (1)(B)(i),

14 “(iii) refrigerators described in para-  
 15 graph (1)(A)(ii), and

16 “(iv) refrigerators described in para-  
 17 graph (1)(B)(ii).

18 “(c) LIMITATION ON MAXIMUM CREDIT.—

19 “(1) IN GENERAL.—The maximum amount of  
 20 credit allowed under subsection (a) with respect to  
 21 a taxpayer for all taxable years shall be—

22 “(A) \$30,000,000 with respect to the cred-  
 23 it determined under subsection (b)(1)(A), and

24 “(B) \$30,000,000 with respect to the cred-  
 25 it determined under subsection (b)(1)(B).



1           “(2) LIMITATION BASED ON GROSS RE-  
 2           CEIPTS.—The credit allowed under subsection (a)  
 3           with respect to a taxpayer for the taxable year shall  
 4           not exceed an amount equal to 2 percent of the aver-  
 5           age annual gross receipts of the taxpayer for the 3  
 6           taxable years preceding the taxable year in which  
 7           the credit is determined.

8           “(3) GROSS RECEIPTS.—For purposes of this  
 9           subsection, the rules of paragraphs (2) and (3) of  
 10          section 448(c) shall apply.

11          “(d) DEFINITIONS.—For purposes of this section—

12           “(1) QUALIFIED ENERGY EFFICIENT APPLI-  
 13           ANCE.—The term ‘qualified energy efficient appli-  
 14           ance’ means—

15                   “(A) a clothes washer described in sub-  
 16                   paragraph (A)(i) or (B)(i) of subsection (b)(1),  
 17                   or

18                   “(B) a refrigerator described in subpara-  
 19                   graph (A)(ii) or (B)(ii) of subsection (b)(1).

20           “(2) CLOTHES WASHER.—The term ‘clothes  
 21           washer’ means a residential clothes washer, includ-  
 22           ing a residential style coin operated washer.

23           “(3) REFRIGERATOR.—The term ‘refrigerator’  
 24           means an automatic defrost refrigerator-freezer

1       which has an internal volume of at least 16.5 cubic  
2       feet.

3               “(4) MEF.—The term ‘MEF’ means Modified  
4       Energy Factor (as determined by the Secretary of  
5       Energy).

6       “(e) SPECIAL RULES.—

7               “(1) IN GENERAL.—Rules similar to the rules  
8       of subsections (c), (d), and (e) of section 52 shall  
9       apply for purposes of this section.

10              “(2) AGGREGATION RULES.—All persons treat-  
11       ed as a single employer under subsection (a) or (b)  
12       of section 52 or subsection (m) or (o) of section 414  
13       shall be treated as 1 person for purposes of sub-  
14       section (a).

15       “(f) VERIFICATION.—The taxpayer shall submit such  
16       information or certification as the Secretary, in consulta-  
17       tion with the Secretary of Energy, determines necessary  
18       to claim the credit amount under subsection (a).

19       “(g) TERMINATION.—This section shall not apply—

20               “(1) with respect to refrigerators described in  
21       subsection (b)(1)(A)(ii) produced after December 31,  
22       2004, and

23               “(2) with respect to all other qualified energy  
24       efficient appliances produced after December 31,  
25       2006.”.

1 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-  
 2 lating to transition rules), as amended by this Act, is  
 3 amended by adding at the end the following new para-  
 4 graph:

5 “(14) NO CARRYBACK OF ENERGY EFFICIENT  
 6 APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No  
 7 portion of the unused business credit for any taxable  
 8 year which is attributable to the energy efficient ap-  
 9 pliance credit determined under section 45H may be  
 10 carried to a taxable year ending on or before the  
 11 date of the enactment of such section.”.

12 (c) CONFORMING AMENDMENT.—Section 38(b) (re-  
 13 lating to general business credit), as amended by this Act,  
 14 is amended by striking “plus” at the end of paragraph  
 15 (17), by striking the period at the end of paragraph (18)  
 16 and inserting “, plus”, and by adding at the end the fol-  
 17 lowing new paragraph:

18 “(19) the energy efficient appliance credit de-  
 19 termined under section 45H(a).”.

20 (d) CLERICAL AMENDMENT.—The table of sections  
 21 for subpart D of part IV of subchapter A of chapter 1,  
 22 as amended by this Act, is amended by adding at the end  
 23 the following new item:

“Sec. 45H. Energy efficient appliance credit.”.

24 (e) EFFECTIVE DATE.—The amendments made by  
 25 this section shall apply to appliances produced after the

1 date of the enactment of this Act, in taxable years ending  
2 after such date.

3 **SEC. 303. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**  
4 **PROPERTY.**

5 (a) IN GENERAL.—Subpart A of part IV of sub-  
6 chapter A of chapter 1 (relating to nonrefundable personal  
7 credits) is amended by inserting after section 25B the fol-  
8 lowing new section:

9 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

10 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
11 dividual, there shall be allowed as a credit against the tax  
12 imposed by this chapter for the taxable year an amount  
13 equal to the sum of—

14 “(1) 15 percent of the qualified photovoltaic  
15 property expenditures made by the taxpayer during  
16 such year,

17 “(2) 15 percent of the qualified solar water  
18 heating property expenditures made by the taxpayer  
19 during such year,

20 “(3) 30 percent of the qualified fuel cell prop-  
21 erty expenditures made by the taxpayer during such  
22 year,

23 “(4) 30 percent of the qualified wind energy  
24 property expenditures made by the taxpayer during  
25 such year, and

1           “(5) the sum of the qualified Tier 2 energy effi-  
2           cient building property expenditures made by the  
3           taxpayer during such year.

4           “(b) LIMITATIONS.—

5           “(1) MAXIMUM CREDIT.—The credit allowed  
6           under subsection (a) shall not exceed—

7                   “(A) \$2,000 for property described in sub-  
8                   section (d)(1),

9                   “(B) \$2,000 for property described in sub-  
10                  section (d)(2),

11                  “(C) \$1,000 for each kilowatt of capacity  
12                  of property described in subsection (d)(4),

13                  “(D) \$2,000 for property described in sub-  
14                  section (d)(5), and

15                  “(E) for property described in subsection  
16                  (d)(6)—

17                          “(i) \$75 for each electric heat pump  
18                          water heater,

19                          “(ii) \$250 for each electric heat  
20                          pump,

21                          “(iii) \$250 for each advanced natural  
22                          gas furnace,

23                          “(iv) \$250 for each central air condi-  
24                          tioner,

1 “(v) \$75 for each natural gas water  
2 heater, and

3 “(vi) \$250 for each geothermal heat  
4 pump.

5 “(2) SAFETY CERTIFICATIONS.—No credit shall  
6 be allowed under this section for an item of property  
7 unless—

8 “(A) in the case of solar water heating  
9 property, such property is certified for perform-  
10 ance and safety by the non-profit Solar Rating  
11 Certification Corporation or a comparable enti-  
12 ty endorsed by the government of the State in  
13 which such property is installed,

14 “(B) in the case of a photovoltaic property,  
15 a fuel cell property, or a wind energy property,  
16 such property meets appropriate fire and elec-  
17 tric code requirements, and

18 “(C) in the case of property described in  
19 subsection (d)(6), such property meets the per-  
20 formance and quality standards, and the certifi-  
21 cation requirements (if any), which—

22 “(i) have been prescribed by the Sec-  
23 retary by regulations (after consultation  
24 with the Secretary of Energy or the Ad-

1                   ministrator of the Environmental Protec-  
 2                   tion Agency, as appropriate),

3                   “(ii) in the case of the energy effi-  
 4                   ciency ratio (EER)—

5                   “(I) require measurements to be  
 6                   based on published data which is test-  
 7                   ed by manufacturers at 95 degrees  
 8                   Fahrenheit, and

9                   “(II) do not require ratings to be  
 10                  based on certified data of the Air  
 11                  Conditioning and Refrigeration Insti-  
 12                  tute, and

13                  “(iii) are in effect at the time of the  
 14                  acquisition of the property.

15           “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
 16           credit allowable under subsection (a) exceeds the limita-  
 17           tion imposed by section 26(a) for such taxable year re-  
 18           duced by the sum of the credits allowable under this sub-  
 19           part (other than this section and section 25D), such excess  
 20           shall be carried to the succeeding taxable year and added  
 21           to the credit allowable under subsection (a) for such suc-  
 22           ceeding taxable year.

23           “(d) DEFINITIONS.—For purposes of this section—

24                   “(1) QUALIFIED SOLAR WATER HEATING PROP-  
 25           ERTY EXPENDITURE.—The term ‘qualified solar

1 water heating property expenditure’ means an ex-  
2 penditure for property to heat water for use in a  
3 dwelling unit located in the United States and used  
4 as a residence by the taxpayer if at least half of the  
5 energy used by such property for such purpose is de-  
6 rived from the sun.

7 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-  
8 PENDITURE.—The term ‘qualified photovoltaic prop-  
9 erty expenditure’ means an expenditure for property  
10 that uses solar energy to generate electricity for use  
11 in such a dwelling unit.

12 “(3) SOLAR PANELS.—No expenditure relating  
13 to a solar panel or other property installed as a roof  
14 (or portion thereof) shall fail to be treated as prop-  
15 erty described in paragraph (1) or (2) solely because  
16 it constitutes a structural component of the struc-  
17 ture on which it is installed.

18 “(4) QUALIFIED FUEL CELL PROPERTY EX-  
19 PENDITURE.—The term ‘qualified fuel cell property  
20 expenditure’ means an expenditure for qualified fuel  
21 cell property (as defined in section 48(a)(4)) in-  
22 stalled on or in connection with such a dwelling unit.

23 “(5) QUALIFIED WIND ENERGY PROPERTY EX-  
24 PENDITURE.—The term ‘qualified wind energy prop-  
25 erty expenditure’ means an expenditure for property



1       which uses wind energy to generate electricity for  
2       use in such a dwelling unit.

3               “(6) QUALIFIED TIER 2 ENERGY EFFICIENT  
4       BUILDING PROPERTY EXPENDITURE.—

5               “(A) IN GENERAL.—The term ‘qualified  
6       Tier 2 energy efficient building property ex-  
7       penditure’ means an expenditure for any Tier 2  
8       energy efficient building property.

9               “(B) TIER 2 ENERGY EFFICIENT BUILDING  
10       PROPERTY.—The term ‘Tier 2 energy efficient  
11       building property’ means—

12               “(i) an electric heat pump water heat-  
13       er which yields an energy factor of at least  
14       1.7 in the standard Department of Energy  
15       test procedure,

16               “(ii) an electric heat pump which has  
17       a heating seasonal performance factor  
18       (HSPF) of at least 9, a seasonal energy ef-  
19       ficiency ratio (SEER) of at least 15, and  
20       an energy efficiency ratio (EER) of at  
21       least 12.5,

22               “(iii) an advanced natural gas furnace  
23       which achieves at least 95 percent annual  
24       fuel utilization efficiency (AFUE),

1                   “(iv) a central air conditioner which  
2                   has a seasonal energy efficiency ratio  
3                   (SEER) of at least 15 and an energy effi-  
4                   ciency ratio (EER) of at least 12.5,

5                   “(v) a natural gas water heater which  
6                   has an energy factor of at least 0.80 in the  
7                   standard Department of Energy test proce-  
8                   dure, and

9                   “(vi) a geothermal heat pump which  
10                  has an energy efficiency ratio (EER) of at  
11                  least 21.

12                 “(7) LABOR COSTS.—Expenditures for labor  
13                 costs properly allocable to the onsite preparation, as-  
14                 sembly, or original installation of the property de-  
15                 scribed in paragraph (1), (2), (4), (5), or (6) and for  
16                 piping or wiring to interconnect such property to the  
17                 dwelling unit shall be taken into account for pur-  
18                 poses of this section.

19                 “(8) SWIMMING POOLS, ETC., USED AS STOR-  
20                 AGE MEDIUM.—Expenditures which are properly al-  
21                 locable to a swimming pool, hot tub, or any other  
22                 energy storage medium which has a function other  
23                 than the function of such storage shall not be taken  
24                 into account for purposes of this section.

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

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

8               “(A) The amount of the credit allowable,  
9 under subsection (a) by reason of expenditures  
10 (as the case may be) made during such cal-  
11 endar year by any of such individuals with re-  
12 spect to such dwelling unit shall be determined  
13 by treating all of such individuals as 1 taxpayer  
14 whose taxable year is such calendar year.

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

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

9           “(3) CONDOMINIUMS.—

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

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

1           “(4) ALLOCATION IN CERTAIN CASES.—Except  
2           in the case of qualified wind energy property expend-  
3           itures, if less than 80 percent of the use of an item  
4           is for nonbusiness purposes, only that portion of the  
5           expenditures for such item which is properly allo-  
6           cable to use for nonbusiness purposes shall be taken  
7           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)(5)(C)).

5       “(f) 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       “(g) TERMINATION.—The credit allowed under this  
 12 section shall not apply to expenditures after December 31,  
 13 2007.”.

14       (b) CREDIT ALLOWED AGAINST REGULAR TAX AND  
 15 ALTERNATIVE MINIMUM TAX.—

16               (1) IN GENERAL.—Section 25C(b), as added by  
 17 subsection (a), is amended by adding at the end the  
 18 following new paragraph:

19               “(3) LIMITATION BASED ON AMOUNT OF  
 20 TAX.—The credit allowed under subsection (a) for  
 21 the taxable year shall not exceed the excess of—

22                       “(A) the sum of the regular tax liability  
 23                       (as defined in section 26(b)) plus the tax im-  
 24                       posed by section 55, over

1           “(B) the sum of the credits allowable  
2 under this subpart (other than this section and  
3 section 25D) and section 27 for the taxable  
4 year.”.

5           (2) CONFORMING AMENDMENTS.—

6           (A) Section 25C(c), as added by subsection  
7 (a), is amended by striking “section 26(a) for  
8 such taxable year reduced by the sum of the  
9 credits allowable under this subpart (other than  
10 this section and section 25D)” and inserting  
11 “subsection (b)(3)”.

12           (B) Section 23(b)(4)(B) is amended by in-  
13 serting “and section 25C” after “this section”.

14           (C) Section 24(b)(3)(B) is amended by  
15 striking “23 and 25B” and inserting “23, 25B,  
16 and 25C”.

17           (D) Section 25(e)(1)(C) is amended by in-  
18 serting “25C,” after “25B,”.

19           (E) Section 25B(g)(2) is amended by  
20 striking “section 23” and inserting “sections 23  
21 and 25C”.

22           (F) Section 26(a)(1) is amended by strik-  
23 ing “and 25B” and inserting “25B, and 25C”.

24           (G) Section 904(h) is amended by striking  
25 “and 25B” and inserting “25B, and 25C”.

1 (H) Section 1400C(d) is amended by strik-  
 2 ing “and 25B” and inserting “25B, and 25C”.

3 (c) ADDITIONAL CONFORMING AMENDMENTS.—

4 (1) Section 23(e), as in effect for taxable years  
 5 beginning before January 1, 2004, is amended by  
 6 striking “section 1400C” and inserting “sections  
 7 25C and 1400C”.

8 (2) Section 25(e)(1)(C), as in effect for taxable  
 9 years beginning before January 1, 2004, is amended  
 10 by inserting “, 25Cs,” after “sections 23”.

11 (3) Subsection (a) of section 1016, as amended  
 12 by this Act, is amended by striking “and” at the end  
 13 of paragraph (29), by striking the period at the end  
 14 of paragraph (30) and inserting “, and”, and by  
 15 adding at the end the following new paragraph:

16 “(31) to the extent provided in section 25C(f),  
 17 in the case of amounts with respect to which a credit  
 18 has been allowed under section 25C.”.

19 (4) Section 1400C(d), as in effect for taxable  
 20 years beginning before January 1, 2004, is amended  
 21 by inserting “and section 25C” after “this section”.

22 (5) The table of sections for subpart A of part  
 23 IV of subchapter A of chapter 1 is amended by in-  
 24 serting after the item relating to section 25B the fol-  
 25 lowing new item:

“Sec. 25C. Residential energy efficient property.”.



1 (d) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided by para-  
 3 graph (2), the amendments made by this section  
 4 shall apply to expenditures after the date of the en-  
 5 actment of this Act, in taxable years ending after  
 6 such date.

7 (2) SUBSECTION (b).—The amendments made  
 8 by subsection (b) shall apply to taxable years begin-  
 9 ning after December 31, 2003.

10 **SEC. 304. CREDIT FOR BUSINESS INSTALLATION OF QUALI-**  
 11 **FIED FUEL CELLS AND STATIONARY MICRO-**  
 12 **TURBINE POWER PLANTS.**

13 (a) IN GENERAL.—Subparagraph (A) of section  
 14 48(a)(3) (defining energy property) is amended by strik-  
 15 ing “or” at the end of clause (i), by adding “or” at the  
 16 end of clause (ii), and by inserting after clause (ii) the  
 17 following new clause:

18 “(iii) qualified fuel cell property or  
 19 qualified microturbine property,”.

20 (b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED  
 21 MICROTURBINE PROPERTY.—Subsection (a) of section 48  
 22 is amended by redesignating paragraphs (4) and (5) as  
 23 paragraphs (5) and (6), respectively, and by inserting  
 24 after paragraph (3) the following new paragraph:

“(4) QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.—For purposes of this subsection—

“(A) QUALIFIED FUEL CELL PROPERTY.—

“(i) IN GENERAL.—The term ‘qualified fuel cell property’ means a fuel cell power plant that—

“(I) generates at least 0.5 kilowatt of electricity using an electrochemical process, and

“(II) has an electricity-only generation efficiency greater than 30 percent.

“(ii) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

“(I) 30 percent of the basis of such property, or

“(II) \$500 for each 0.5 kilowatt of capacity of such property.

“(iii) FUEL CELL POWER PLANT.—The term ‘fuel cell power plant’ means an

1 integrated system comprised of a fuel cell  
 2 stack assembly and associated balance of  
 3 plant components that converts a fuel into  
 4 electricity using electrochemical means.

5 “(iv) TERMINATION.—Such term shall  
 6 not include any property placed in service  
 7 after December 31, 2007.

8 “(B) QUALIFIED MICROTURBINE PROP-  
 9 ERTY.—

10 “(i) IN GENERAL.—The term ‘quali-  
 11 fied microturbine property’ means a sta-  
 12 tionary microturbine power plant which  
 13 has an electricity-only generation efficiency  
 14 not less than 26 percent at International  
 15 Standard Organization conditions.

16 “(ii) LIMITATION.—In the case of  
 17 qualified microturbine property placed in  
 18 service during the taxable year, the credit  
 19 determined under paragraph (1) for such  
 20 year with respect to such property shall  
 21 not exceed an amount equal to the lesser  
 22 of—

23 “(I) 10 percent of the basis of  
 24 such property, or

1                   “(II) \$200 for each kilowatt of  
2                   capacity of such property.

3                   “(iii) STATIONARY MICROTURBINE  
4                   POWER PLANT.—The term ‘stationary  
5                   microturbine power plant’ means a system  
6                   comprising of a rotary engine which is ac-  
7                   tuated by the aerodynamic reaction or im-  
8                   pulse or both on radial or axial curved full-  
9                   circumferential-admission airfoils on a cen-  
10                  tral axial rotating spindle. Such system—

11                  “(I) commonly includes an air  
12                  compressor, combustor, gas pathways  
13                  which lead compressed air to the com-  
14                  bustor and which lead hot combusted  
15                  gases from the combustor to 1 or  
16                  more rotating turbine spools, which in  
17                  turn drive the compressor and power  
18                  output shaft,

19                  “(II) includes a fuel compressor,  
20                  recuperator/regenerator, generator or  
21                  alternator, integrated combined cycle  
22                  equipment, cooling-heating-and-power  
23                  equipment, sound attenuation appa-  
24                  ratus, and power conditioning equip-  
25                  ment, and

1 “(III) includes all secondary com-  
 2 ponents located between the existing  
 3 infrastructure for fuel delivery and  
 4 the existing infrastructure for power  
 5 distribution, including equipment and  
 6 controls for meeting relevant power  
 7 standards, such as voltage, frequency,  
 8 and power factors.

9 “(iv) TERMINATION.—Such term shall  
 10 not include any property placed in service  
 11 after December 31, 2006.”.

12 (c) LIMITATION.—Section 48(a)(2)(A) (relating to  
 13 energy percentage) is amended to read as follows:

14 “(A) IN GENERAL.—The energy percent-  
 15 age is—

16 “(i) in the case of qualified fuel cell  
 17 property, 30 percent, and

18 “(ii) in the case of any other energy  
 19 property, 10 percent.”.

20 (d) CONFORMING AMENDMENTS.—

21 (A) Section 29(b)(3)(A)(i)(III) is amended  
 22 by striking “section 48(a)(4)(C)” and inserting  
 23 “section 48(a)(5)(C)”.

24 (B) Section 48(a)(1) is amended by insert-  
 25 ing “except as provided in subparagraph (A)(ii)

1           or (B)(ii) of paragraph (4),” before “the en-  
2           ergy”.

3           (e) EFFECTIVE DATE.—The amendments made by  
4 this subsection shall apply to property placed in service  
5 after the date of the enactment of this Act, in taxable  
6 years ending after such date, under rules similar to the  
7 rules of section 48(m) of the Internal Revenue Code of  
8 1986 (as in effect on the day before the date of the enact-  
9 ment of the Revenue Reconciliation Act of 1990).

10 **SEC. 305. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**  
11 **DUCTION.**

12           (a) IN GENERAL.—Part VI of subchapter B of chap-  
13 ter 1 is amended by inserting after section 179A the fol-  
14 lowing new section:

15 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**  
16 **DEDUCTION.**

17           “(a) IN GENERAL.—There shall be allowed as a de-  
18 duction for the taxable year an amount equal to the energy  
19 efficient commercial building property expenditures made  
20 by a taxpayer for the taxable year.

21           “(b) MAXIMUM AMOUNT OF DEDUCTION.—The  
22 amount of energy efficient commercial building property  
23 expenditures taken into account under subsection (a) shall  
24 not exceed an amount equal to the product of—

25           “(1) \$2.25, and

1           “(2) the square footage of the building with re-  
2           spect to which the expenditures are made.

3           “(c) YEAR DEDUCTION ALLOWED.—The deduction  
4           under subsection (a) shall be allowed in the taxable year  
5           in which the construction of the building is completed.

6           “(d) ENERGY EFFICIENT COMMERCIAL BUILDING  
7           PROPERTY EXPENDITURES.—For purposes of this sec-  
8           tion—

9                   “(1) IN GENERAL.—The term ‘energy efficient  
10           commercial building property expenditures’ means  
11           an amount paid or incurred for energy efficient com-  
12           mercial building property installed on or in connec-  
13           tion with new construction or reconstruction of prop-  
14           erty—

15                           “(A) for which depreciation is allowable  
16                           under section 167,

17                           “(B) which is located in the United States,  
18                           and

19                           “(C) the construction or erection of which  
20                           is completed by the taxpayer.

21           Such property includes all residential rental prop-  
22           erty, including low-rise multifamily structures and  
23           single family housing property which is not within  
24           the scope of Standard 90.1–1999 (described in para-  
25           graph (2)). Such term includes expenditures for

1 labor costs properly allocable to the onsite prepara-  
2 tion, assembly, or original installation of the prop-  
3 erty.

4 “(2) ENERGY EFFICIENT COMMERCIAL BUILD-  
5 ING PROPERTY.—For purposes of paragraph (1)—

6 “(A) IN GENERAL.—The term ‘energy effi-  
7 cient commercial building property’ means any  
8 property which reduces total annual energy and  
9 power costs with respect to the lighting, heat-  
10 ing, cooling, ventilation, and hot water supply  
11 systems of the building by 50 percent or more  
12 in comparison to a reference building which  
13 meets the requirements of Standard 90.1–1999  
14 of the American Society of Heating, Refrig-  
15 erating, and Air Conditioning Engineers and  
16 the Illuminating Engineering Society of North  
17 America using methods of calculation under  
18 subparagraph (B) and certified by qualified  
19 professionals as provided under paragraph (5).

20 “(B) METHODS OF CALCULATION.—The  
21 Secretary, in consultation with the Secretary of  
22 Energy, shall promulgate regulations which de-  
23 scribe in detail methods for calculating and  
24 verifying energy and power consumption and  
25 cost, taking into consideration the provisions of



1 the 2001 California Nonresidential Alternative  
2 Calculation Method Approval Manual. These  
3 regulations shall meet the following require-  
4 ments:

5 “(i) In calculating tradeoffs and en-  
6 ergy performance, the regulations shall  
7 prescribe the costs per unit of energy and  
8 power, such as kilowatt hour, kilowatt, gal-  
9 lon of fuel oil, and cubic foot or Btu of  
10 natural gas, which may be dependent on  
11 time of usage.

12 “(ii) The calculational methodology  
13 shall require that compliance be dem-  
14 onstrated for a whole building. If some sys-  
15 tems of the building, such as lighting, are  
16 designed later than other systems of the  
17 building, the method shall provide that ei-  
18 ther—

19 “(I) the expenses taken into ac-  
20 count under paragraph (1) shall not  
21 occur until the date designs for all en-  
22 ergy-using systems of the building are  
23 completed,

24 “(II) the energy performance of  
25 all systems and components not yet

1 designed shall be assumed to comply  
2 minimally with the requirements of  
3 such Standard 90.1–1999, or

4 “(III) the expenses taken into ac-  
5 count under paragraph (1) shall be a  
6 fraction of such expenses based on the  
7 performance of less than all energy-  
8 using systems in accordance with  
9 clause (iii).

10 “(iii) The expenditures in connection  
11 with the design of subsystems in the build-  
12 ing, such as the envelope, the heating, ven-  
13 tilation, air conditioning and water heating  
14 system, and the lighting system shall be al-  
15 located to the appropriate building sub-  
16 system based on system-specific energy  
17 cost savings targets in regulations promul-  
18 gated by the Secretary of Energy which  
19 are equivalent, using the calculation meth-  
20 odology, to the whole building requirement  
21 of 50 percent savings.

22 “(iv) The calculational methods under  
23 this subparagraph need not comply fully  
24 with section 11 of such Standard 90.1–  
25 1999.

1           “(v) The calculational methods shall  
2           be fuel neutral, such that the same energy  
3           efficiency features shall qualify a building  
4           for the deduction under this subsection re-  
5           gardless of whether the heating source is a  
6           gas or oil furnace or an electric heat pump.

7           “(vi) The calculational methods shall  
8           provide appropriate calculated energy sav-  
9           ings for design methods and technologies  
10          not otherwise credited in either such  
11          Standard 90.1–1999 or in the 2001 Cali-  
12          fornia Nonresidential Alternative Calcula-  
13          tion Method Approval Manual, including  
14          the following:

15               “(I) Natural ventilation.

16               “(II) Evaporative cooling.

17               “(III) Automatic lighting controls  
18               such as occupancy sensors, photocells,  
19               and timeclocks.

20               “(IV) Daylighting.

21               “(V) Designs utilizing semi-con-  
22               ditioned spaces that maintain ade-  
23               quate comfort conditions without air  
24               conditioning or without heating.

1 “(VI) Improved fan system effi-  
 2 ciency, including reductions in static  
 3 pressure.

4 “(VII) Advanced unloading  
 5 mechanisms for mechanical cooling,  
 6 such as multiple or variable speed  
 7 compressors.

8 “(VIII) The calculational meth-  
 9 ods may take into account the extent  
 10 of commissioning in the building, and  
 11 allow the taxpayer to take into ac-  
 12 count measured performance that ex-  
 13 ceeds typical performance.

14 “(C) COMPUTER SOFTWARE.—

15 “(i) IN GENERAL.—Any calculation  
 16 under this paragraph shall be prepared by  
 17 qualified computer software.

18 “(ii) QUALIFIED COMPUTER SOFT-  
 19 WARE.—For purposes of this subpara-  
 20 graph, the term ‘qualified computer soft-  
 21 ware’ means software—

22 “(I) for which the software de-  
 23 signer has certified that the software  
 24 meets all procedures and detailed  
 25 methods for calculating energy and

1 power consumption and costs as re-  
2 quired by the Secretary,

3 “(II) which provides such forms  
4 as required to be filed by the Sec-  
5 retary in connection with energy effi-  
6 ciency of property and the deduction  
7 allowed under this subsection, and

8 “(III) which provides a notice  
9 form which summarizes the energy ef-  
10 ficiency features of the building and  
11 its projected annual energy costs.

12 “(3) ALLOCATION OF DEDUCTION FOR PUBLIC  
13 PROPERTY.—In the case of energy efficient commer-  
14 cial building property installed on or in public prop-  
15 erty, the Secretary shall promulgate a regulation to  
16 allow the allocation of the deduction to the person  
17 primarily responsible for designing the property in  
18 lieu of the public entity which is the owner of such  
19 property. Such person shall be treated as the tax-  
20 payer for purposes of this subsection.

21 “(4) NOTICE TO OWNER.—The qualified indi-  
22 vidual shall provide an explanation to the owner of  
23 the building regarding the energy efficiency features  
24 of the building and its projected annual energy costs

1 as provided in the notice under paragraph  
2 (2)(C)(ii)(III).

3 “(5) CERTIFICATION.—

4 “(A) IN GENERAL.—Except as provided in  
5 this paragraph, the Secretary shall prescribe  
6 procedures for the inspection and testing for  
7 compliance of buildings that are comparable,  
8 given the difference between commercial and  
9 residential buildings, to the requirements in the  
10 Mortgage Industry National Accreditation Pro-  
11 cedures for Home Energy Rating Systems.

12 “(B) QUALIFIED INDIVIDUALS.—Individ-  
13 uals qualified to determine compliance shall be  
14 only those individuals who are recognized by an  
15 organization certified by the Secretary for such  
16 purposes. The Secretary may qualify a Home  
17 Ratings Systems Organization, a local building  
18 code agency, a State or local energy office, a  
19 utility, or any other organization which meets  
20 the requirements prescribed under this section.

21 “(C) PROFICIENCY OF QUALIFIED INDIVID-  
22 UALS.—The Secretary shall consult with non-  
23 profit organizations and State agencies with ex-  
24 pertise in energy efficiency calculations and in-  
25 spections to develop proficiency tests and train-

1           ing programs to qualify individuals to determine  
2           compliance.

3           “(e) BASIS REDUCTION.—For purposes of this sub-  
4 title, if a deduction is allowed under this section with re-  
5 spect to any energy efficient commercial building property,  
6 the basis of such property shall be reduced by the amount  
7 of the deduction so allowed.

8           “(f) REGULATIONS.—The Secretary shall promulgate  
9 such regulations as necessary to take into account new  
10 technologies regarding energy efficiency and renewable en-  
11 ergy for purposes of determining energy efficiency and  
12 savings under this section.

13          “(g) TERMINATION.—This section shall not apply  
14 with respect to any energy efficient commercial building  
15 property expenditures in connection with property—

16               “(1) the plans for which are not certified under  
17 subsection (d)(5) on or before December 31, 2007,  
18 and

19               “(2) the construction of which is not completed  
20 on or before December 31, 2009.”.

21          (b) CONFORMING AMENDMENTS.—

22               (1) Section 1016(a), as amended by this Act, is  
23 amended by striking “and” at the end of paragraph  
24 (30), by striking the period at the end of paragraph

1 (31) and inserting “, and”, and by adding at the  
2 end the following new paragraph:

3 “(32) to the extent provided in section  
4 179B(e).”.

5 (2) Section 1245(a) is amended by inserting  
6 “179B,” after “179A,” both places it appears in  
7 paragraphs (2)(C) and (3)(C).

8 (3) Section 1250(b)(3) is amended by inserting  
9 before the period at the end of the first sentence “or  
10 by section 179B”.

11 (4) Section 263(a)(1) is amended by striking  
12 “or” at the end of subparagraph (G), by striking the  
13 period at the end of subparagraph (H) and inserting  
14 “, or”, and by inserting after subparagraph (H) the  
15 following new subparagraph:

16 “(I) expenditures for which a deduction is  
17 allowed under section 179B.”.

18 (5) Section 312(k)(3)(B) is amended by strik-  
19 ing “or 179A” each place it appears in the heading  
20 and text and inserting “, 179A, or 179B”.

21 (c) CLERICAL AMENDMENT.—The table of sections  
22 for part VI of subchapter B of chapter 1 is amended by  
23 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.



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

4 **SEC. 306. ALLOWANCE OF DEDUCTION FOR QUALIFIED**  
 5 **NEW OR RETROFITTED ENERGY MANAGE-**  
 6 **MENT DEVICES.**

7 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 8 ter 1 (relating to itemized deductions for individuals and  
 9 corporations), as amended by this Act, is amended by in-  
 10 serting after section 179B the following new section:

11 **“SEC. 179C. DEDUCTION FOR QUALIFIED NEW OR RETRO-**  
 12 **FITTED ENERGY MANAGEMENT DEVICES.**

13 “(a) ALLOWANCE OF DEDUCTION.—In the case of a  
 14 taxpayer who is a supplier of electric energy or natural  
 15 gas or a provider of electric energy or natural gas services,  
 16 there shall be allowed as a deduction an amount equal to  
 17 the cost of each qualified energy management device  
 18 placed in service during the taxable year.

19 “(b) MAXIMUM DEDUCTION.—The deduction allowed  
 20 by this section with respect to each qualified energy man-  
 21 agement device shall not exceed \$30.

22 “(c) QUALIFIED ENERGY MANAGEMENT DEVICE.—  
 23 The term ‘qualified energy management device’ means any  
 24 tangible property to which section 168 applies if such  
 25 property is a meter or metering device—

1           “(1) which is acquired and used by the tax-  
 2           payer to enable consumers to manage their purchase  
 3           or use of electricity or natural gas in response to en-  
 4           ergy price and usage signals, and

5           “(2) which permits reading of energy price and  
 6           usage signals on at least a daily basis.

7           “(d) PROPERTY USED OUTSIDE THE UNITED  
 8 STATES NOT QUALIFIED.—No deduction shall be allowed  
 9 under subsection (a) with respect to property which is  
 10 used predominantly outside the United States or with re-  
 11 spect to the portion of the cost of any property taken into  
 12 account under section 179.

13          “(e) BASIS REDUCTION.—

14           “(1) IN GENERAL.—For purposes of this title,  
 15           the basis of any property shall be reduced by the  
 16           amount of the deduction with respect to such prop-  
 17           erty which is allowed by subsection (a).

18           “(2) ORDINARY INCOME RECAPTURE.—For  
 19           purposes of section 1245, the amount of the deduc-  
 20           tion allowable under subsection (a) with respect to  
 21           any property that is of a character subject to the al-  
 22           lowance for depreciation shall be treated as a deduc-  
 23           tion allowed for depreciation under section 167.”.

24          (b) CONFORMING AMENDMENTS.—

1           (1) Section 263(a)(1), as amended by this Act,  
2           is amended by striking “or” at the end of subpara-  
3           graph (H), by striking the period at the end of sub-  
4           paragraph (I) and inserting “, or”, and by inserting  
5           after subparagraph (I) the following new subpara-  
6           graph:

7                       “(J) expenditures for which a deduction is  
8                       allowed under section 179C.”.

9           (2) Section 312(k)(3)(B), as amended by this  
10          Act, is amended by striking “or 179B” each place  
11          it appears in the heading and text and inserting “,  
12          179B, or 179C”.

13          (3) Section 1016(a), as amended by this Act, is  
14          amended by striking “and” at the end of paragraph  
15          (31), by striking the period at the end of paragraph  
16          (32) and inserting “, and”, and by adding at the  
17          end the following new paragraph:

18                       “(33) to the extent provided in section  
19                       179C(e)(1).”.

20          (4) Section 1245(a), as amended by this Act, is  
21          amended by inserting “179C,” after “179B,” both  
22          places it appears in paragraphs (2)(C) and (3)(C).

23          (5) The table of contents for subpart B of part  
24          IV of subchapter A of chapter 1, as amended by this

1 Act, is amended by inserting after the item relating  
 2 to section 179B the following new item:

“Sec. 179C. Deduction for qualified new or retrofitted energy  
 management devices.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to qualified energy management  
 5 devices placed in service after the date of the enactment  
 6 of this Act, in taxable years ending after such date.

7 **SEC. 307. THREE-YEAR APPLICABLE RECOVERY PERIOD**  
 8 **FOR DEPRECIATION OF QUALIFIED ENERGY**  
 9 **MANAGEMENT DEVICES.**

10 (a) IN GENERAL.—Subparagraph (A) of section  
 11 168(e)(3) (relating to classification of property) is amend-  
 12 ed by striking “and” at the end of clause (ii), by striking  
 13 the period at the end of clause (iii) and inserting “, and”,  
 14 and by adding at the end the following new clause:

15 “(iv) any qualified energy manage-  
 16 ment device.”.

17 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-  
 18 MENT DEVICE.—Section 168(i) (relating to definitions  
 19 and special rules) is amended by inserting at the end the  
 20 following new paragraph:

21 “(15) QUALIFIED ENERGY MANAGEMENT DE-  
 22 VICE.—The term ‘qualified energy management de-  
 23 vice’ means any qualified energy management device  
 24 as defined in section 179C(c) which is placed in

1 service by a taxpayer who is a supplier of electric  
 2 energy or natural gas or a provider of electric energy  
 3 or natural gas services.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to property placed in service after  
 6 the date of the enactment of this Act, in taxable years  
 7 ending after such date.

8 **SEC. 308. ENERGY CREDIT FOR COMBINED HEAT AND**  
 9 **POWER SYSTEM PROPERTY.**

10 (a) IN GENERAL.—Subparagraph (A) of section  
 11 48(a)(3) (defining energy property), as amended by this  
 12 Act, is amended by striking “or” at the end of clause (ii),  
 13 by adding “or” at the end of clause (iii), and by inserting  
 14 after clause (iii) the following new clause:

15 “(iv) combined heat and power system  
 16 property,”.

17 (b) COMBINED HEAT AND POWER SYSTEM PROP-  
 18 ERTY.—Subsection (a) of section 48, as amended by this  
 19 Act, is amended by redesignating paragraphs (5) and (6)  
 20 as paragraphs (6) and (7), respectively, and by inserting  
 21 after paragraph (4) the following new paragraph:

22 “(5) COMBINED HEAT AND POWER SYSTEM  
 23 PROPERTY.—For purposes of this subsection—

24 “(A) COMBINED HEAT AND POWER SYS-  
 25 TEM PROPERTY.—The term ‘combined heat and

power system property' means property comprising a system—

“(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

“(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

“(iii) which produces—

“(I) at least 20 percent of its total useful energy in the form of thermal energy, and

“(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

“(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical ca-

1           capacity in excess of 50 megawatts or a me-  
2           chanical energy capacity in excess of  
3           67,000 horsepower, or an equivalent com-  
4           bination of electrical and mechanical en-  
5           ergy capacities), and

6           “(v) which is placed in service after  
7           the date of the enactment of this para-  
8           graph, and before January 1, 2007.

9           “(B) SPECIAL RULES.—

10           “(i) ENERGY EFFICIENCY PERCENT-  
11           AGE.—For purposes of subparagraph  
12           (A)(iv), the energy efficiency percentage of  
13           a system is the fraction—

14                   “(I) the numerator of which is  
15                   the total useful electrical, thermal,  
16                   and mechanical power produced by  
17                   the system at normal operating rates,  
18                   and expected to be consumed in its  
19                   normal application, and

20                   “(II) the denominator of which is  
21                   the lower heating value of the primary  
22                   fuel source for the system.

23           “(ii) DETERMINATIONS MADE ON BTU  
24           BASIS.—The energy efficiency percentage

1 and the percentages under subparagraph  
2 (A)(iii) shall be determined on a Btu basis.

3 “(iii) INPUT AND OUTPUT PROPERTY  
4 NOT INCLUDED.—The term ‘combined heat  
5 and power system property’ does not in-  
6 clude property used to transport the en-  
7 ergy source to the facility or to distribute  
8 energy produced by the facility.

9 “(iv) PUBLIC UTILITY PROPERTY.—

10 “(I) ACCOUNTING RULE FOR  
11 PUBLIC UTILITY PROPERTY.—If the  
12 combined heat and power system  
13 property is public utility property (as  
14 defined in section 168(i)(10)), the  
15 taxpayer may only claim the credit  
16 under the subsection if, with respect  
17 to such property, the taxpayer uses a  
18 normalization method of accounting.

19 “(II) CERTAIN EXCEPTION NOT  
20 TO APPLY.—The matter following  
21 paragraph (3)(D) shall not apply to  
22 combined heat and power system  
23 property.

24 “(v) NONAPPLICATION OF CERTAIN  
25 RULES.—For purposes of determining if



1           the term ‘combined heat and power system  
 2           property’ includes technologies which gen-  
 3           erate electricity or mechanical power using  
 4           back-pressure steam turbines in place of  
 5           existing pressure-reducing valves or which  
 6           make use of waste heat from industrial  
 7           processes such as by using organic rankin,  
 8           stirling, or kalina heat engine systems,  
 9           subparagraph (A) shall be applied without  
 10          regard to clauses (iii) and (iv) thereof.

11           “(C) EXTENSION OF DEPRECIATION RE-  
 12          COVERY PERIOD.—If a taxpayer is allowed cred-  
 13          it under this section for combined heat and  
 14          power system property and such property would  
 15          (but for this subparagraph) have a class life of  
 16          15 years or less under section 168, such prop-  
 17          erty shall be treated as having a 22-year class  
 18          life for purposes of section 168.”.

19          (c) NO CARRYBACK OF ENERGY CREDIT BEFORE  
 20          EFFECTIVE DATE.—Subsection (d) of section 39, as  
 21          amended by this Act, is amended by adding at the end  
 22          the following new paragraph:

23           “(15) NO CARRYBACK OF ENERGY CREDIT BE-  
 24          FORE EFFECTIVE DATE.—No portion of the unused  
 25          business credit for any taxable year which is attrib-

1       utable to the energy credit with respect to property  
 2       described in section 48(a)(5) may be carried back to  
 3       a taxable year ending on or before the date of the  
 4       enactment of such section.”.

5       (d) CONFORMING AMENDMENTS.—

6               (A) Section 25C(e)(6), as added by this  
 7       Act, is amended by striking “section  
 8       48(a)(5)(C)” and inserting “section  
 9       48(a)(6)(C)”.

10              (B) Section 29(b)(3)(A)(i)(III), as amend-  
 11       ed by this Act, is amended by striking “section  
 12       48(a)(5)(C)” and inserting “section  
 13       48(a)(6)(C)”.

14       (e) EFFECTIVE DATE.—The amendments made by  
 15       this section shall apply to property placed in service after  
 16       the date of the enactment of this Act, in taxable years  
 17       ending after such date.

18       **SEC. 309. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**  
 19       **MENTS TO EXISTING HOMES.**

20       (a) IN GENERAL.—Subpart A of part IV of sub-  
 21       chapter A of chapter 1 (relating to nonrefundable personal  
 22       credits), as amended by this Act, is amended by inserting  
 23       after section 25C the following new section:

1   **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**  
2                   **ING HOMES.**

3           “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
4   dividual, there shall be allowed as a credit against the tax  
5   imposed by this chapter for the taxable year an amount  
6   equal to 10 percent of the amount paid or incurred by  
7   the taxpayer for qualified energy efficiency improvements  
8   installed during such taxable year.

9           “(b) LIMITATIONS.—

10           “(1) MAXIMUM CREDIT.—The credit allowed by  
11   this section with respect to a dwelling shall not ex-  
12   ceed \$300.

13           “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER  
14   ON SAME DWELLING TAKEN INTO ACCOUNT.—If a  
15   credit was allowed to the taxpayer under subsection  
16   (a) with respect to a dwelling in 1 or more prior tax-  
17   able years, the amount of the credit otherwise allow-  
18   able for the taxable year with respect to that dwell-  
19   ing shall not exceed the amount of \$300 reduced by  
20   the sum of the credits allowed under subsection (a)  
21   to the taxpayer with respect to the dwelling for all  
22   prior taxable years.

23           “(c) CARRYFORWARD OF UNUSED CREDIT.—If the  
24   credit allowable under subsection (a) exceeds the limita-  
25   tion imposed by section 26(a) for such taxable year re-  
26   duced by the sum of the credits allowable under this sub-

1 part (other than this section) for any taxable year, such  
 2 excess shall be carried to the succeeding taxable year and  
 3 added to the credit allowable under subsection (a) for such  
 4 succeeding taxable year.

5       “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-  
 6 MENTS.—For purposes of this section, the term ‘qualified  
 7 energy efficiency improvements’ means any energy effi-  
 8 cient building envelope component which is certified to  
 9 meet or exceed the prescriptive criteria for such compo-  
 10 nent in the 2000 International Energy Conservation Code,  
 11 any energy efficient building envelope component which is  
 12 described in subsection (f)(4)(B) and is certified by the  
 13 Energy Star program managed jointly by the Environ-  
 14 mental Protection Agency and the Department of Energy,  
 15 or any combination of energy efficiency measures which  
 16 are certified as achieving at least a 30 percent reduction  
 17 in heating and cooling energy usage for the dwelling (as  
 18 measured in terms of energy cost to the taxpayer), if—

19               “(1) such component or combination of meas-  
 20 ures is installed in or on a dwelling—

21                       “(A) located in the United States, and

22                       “(B) owned and used by the taxpayer as  
 23 the taxpayer’s principal residence (within the  
 24 meaning of section 121),

1           “(2) the original use of such component or com-  
 2           bination of measures commences with the taxpayer,  
 3           and

4           “(3) such component or combination of meas-  
 5           ures reasonably can be expected to remain in use for  
 6           at least 5 years.

7           “(e) CERTIFICATION.—

8           “(1) METHODS OF CERTIFICATION.—

9           “(A) COMPONENT-BASED METHOD.—The  
 10          certification described in subsection (d) for any  
 11          component described in such subsection shall be  
 12          determined on the basis of applicable energy ef-  
 13          ficiency ratings (including product labeling re-  
 14          quirements) for affected building envelope com-  
 15          ponents.

16          “(B) PERFORMANCE-BASED METHOD.—

17          “(i) IN GENERAL.—The certification  
 18          described in subsection (d) for any com-  
 19          bination of measures described in such  
 20          subsection shall be—

21                  “(I) determined by comparing  
 22                  the projected heating and cooling en-  
 23                  ergy usage for the dwelling to such  
 24                  usage for such dwelling in its original  
 25                  condition, and

1                   “(II) accompanied by a written  
2                   analysis documenting the proper ap-  
3                   plication of a permissible energy per-  
4                   formance calculation method to the  
5                   specific circumstances of such dwell-  
6                   ing.

7                   “(ii) COMPUTER SOFTWARE.—Com-  
8                   puter software shall be used in support of  
9                   a performance-based method certification  
10                  under clause (i). Such software shall meet  
11                  procedures and methods for calculating en-  
12                  ergy and cost savings in regulations pro-  
13                  mulgated by the Secretary of Energy. Such  
14                  regulations on the specifications for soft-  
15                  ware and verification protocols shall be  
16                  based on the 2001 California Residential  
17                  Alternative Calculation Method Approval  
18                  Manual.

19                  “(2) PROVIDER.—A certification described in  
20                  subsection (d) shall be provided by—

21                         “(A) in the case of the method described  
22                         in paragraph (1)(A), by a third party, such as  
23                         a local building regulatory authority, a utility,  
24                         a manufactured home production inspection pri-

1           mary inspection agency (IPIA), or a home en-  
2           ergy rating organization, or

3                 “(B) in the case of the method described  
4           in paragraph (1)(B), an individual recognized  
5           by an organization designated by the Secretary  
6           for such purposes.

7                 “(3) FORM.—A certification described in sub-  
8           section (d) shall be made in writing on forms which  
9           specify in readily inspectable fashion the energy effi-  
10          cient components and other measures and their re-  
11          spective efficiency ratings, and which include a per-  
12          manent label affixed to the electrical distribution  
13          panel of the dwelling.

14                 “(4) REGULATIONS.—

15                 “(A) IN GENERAL.—In prescribing regula-  
16           tions under this subsection for certification  
17           methods described in paragraph (1)(B), the  
18           Secretary, after examining the requirements for  
19           energy consultants and home energy ratings  
20           providers specified by the Mortgage Industry  
21           National Accreditation Procedures for Home  
22           Energy Rating Systems, shall prescribe proce-  
23           dures for calculating annual energy usage and  
24           cost reductions for heating and cooling and for

1 the reporting of the results. Such regulations  
2 shall—

3 “(i) provide that any calculation pro-  
4 cedures be fuel neutral such that the same  
5 energy efficiency measures allow a dwelling  
6 to be eligible for the credit under this sec-  
7 tion regardless of whether such dwelling  
8 uses a gas or oil furnace or boiler or an  
9 electric heat pump, and

10 “(ii) require that any computer soft-  
11 ware allow for the printing of the Federal  
12 tax forms necessary for the credit under  
13 this section and for the printing of forms  
14 for disclosure to the owner of the dwelling.

15 “(B) PROVIDERS.—For purposes of para-  
16 graph (2)(B), the Secretary shall establish re-  
17 quirements for the designation of individuals  
18 based on the requirements for energy consult-  
19 ants and home energy raters specified by the  
20 Mortgage Industry National Accreditation Pro-  
21 cedures for Home Energy Rating Systems.

22 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
23 poses of this section—

24 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
25 CUPANCY.—In the case of any dwelling unit which is



1 jointly occupied and used during any calendar year  
2 as a residence by 2 or more individuals the following  
3 shall apply:

4 “(A) The amount of the credit allowable  
5 under subsection (a) by reason of expenditures  
6 for the qualified energy efficiency improvements  
7 made during such calendar year by any of such  
8 individuals with respect to such dwelling unit  
9 shall be determined by treating all of such indi-  
10 viduals as 1 taxpayer whose taxable year is  
11 such calendar year.

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

22 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
23 HOUSING CORPORATION.—In the case of an indi-  
24 vidual who is a tenant-stockholder (as defined in sec-  
25 tion 216) in a cooperative housing corporation (as

1 defined in such section), such individual shall be  
2 treated as having paid his tenant-stockholder's pro-  
3 portionate share (as defined in section 216(b)(3)) of  
4 the cost of qualified energy efficiency improvements  
5 made by such corporation.

6 “(3) CONDOMINIUMS.—

7 “(A) IN GENERAL.—In the case of an indi-  
8 vidual who is a member of a condominium man-  
9 agement association with respect to a condo-  
10 minium which the individual owns, such indi-  
11 vidual shall be treated as having paid the indi-  
12 vidual's proportionate share of the cost of quali-  
13 fied energy efficiency improvements made by  
14 such association.

15 “(B) CONDOMINIUM MANAGEMENT ASSO-  
16 CIATION.—For purposes of this paragraph, the  
17 term ‘condominium management association’  
18 means an organization which meets the require-  
19 ments of paragraph (1) of section 528(c) (other  
20 than subparagraph (E) thereof) with respect to  
21 a condominium project substantially all of the  
22 units of which are used as residences.

23 “(4) BUILDING ENVELOPE COMPONENT.—The  
24 term ‘building envelope component’ means—

1           “(A) insulation material or system which is  
 2           specifically and primarily designed to reduce the  
 3           heat loss or gain or a dwelling when installed  
 4           in or on such dwelling,

5           “(B) exterior windows (including sky-  
 6           lights), and

7           “(C) exterior doors.

8           “(5) MANUFACTURED HOMES INCLUDED.—For  
 9           purposes of this section, the term ‘dwelling’ includes  
 10          a manufactured home which conforms to Federal  
 11          Manufactured Home Construction and Safety Stand-  
 12          ards (24 C.F.R. 3280).

13          “(g) BASIS ADJUSTMENT.—For purposes of this sub-  
 14          title, if a credit is allowed under this section for any ex-  
 15          penditure with respect to any property, the increase in the  
 16          basis of such property which would (but for this sub-  
 17          section) result from such expenditure shall be reduced by  
 18          the amount of the credit so allowed.

19          “(h) APPLICATION OF SECTION.—Subsection (a)  
 20          shall apply to qualified energy efficiency improvements in-  
 21          stalled during the period beginning on the date of the en-  
 22          actment of this section and ending on December 31,  
 23          2006.”.

24          (b) CREDIT ALLOWED AGAINST REGULAR TAX AND  
 25          ALTERNATIVE MINIMUM TAX.—

1           (1) IN GENERAL.—Section 25D(b), as added by  
 2           subsection (a), is amended by adding at the end the  
 3           following new paragraph:

4           “(3) LIMITATION BASED ON AMOUNT OF  
 5           TAX.—The credit allowed under subsection (a) for  
 6           the taxable year shall not exceed the excess of—

7                     “(A) the sum of the regular tax liability  
 8                     (as defined in section 26(b)) plus the tax im-  
 9                     posed by section 55, over

10                    “(B) the sum of the credits allowable  
 11                    under this subpart (other than this section) and  
 12                    section 27 for the taxable year.”.

13           (2) CONFORMING AMENDMENTS.—

14                    (A) Section 25D(c), as added by subsection  
 15                    (a), is amended by striking “section 26(a) for  
 16                    such taxable year reduced by the sum of the  
 17                    credits allowable under this subpart (other than  
 18                    this section)” and inserting “subsection (b)(3)”.

19                    (B) Section 23(b)(4)(B), as amended by  
 20                    this Act, is amended by striking “section 25C”  
 21                    and inserting “sections 25C and 25D”.

22                    (C) Section 24(b)(3)(B), as amended by  
 23                    this Act, is amended by striking “and 25C” and  
 24                    inserting “25C, and 25D”.

1 (D) Section 25(e)(1)(C), as amended by  
 2 this Act, is amended by inserting “25D,” after  
 3 “25C,”.

4 (E) Section 25B(g)(2), as amended by this  
 5 Act, is amended by striking “23 and 25C” and  
 6 inserting “23, 25C, and 25D”.

7 (F) Section 26(a)(1), as amended by this  
 8 Act, is amended by striking “and 25C” and in-  
 9 serting “25C, and 25D”.

10 (G) Section 904(h), as amended by this  
 11 Act, is amended by striking “and 25C” and in-  
 12 serting “25C, and 25D”.

13 (H) Section 1400C(d), as amended by this  
 14 Act, is amended by striking “and 25C” and in-  
 15 serting “25C, and 25D”.

16 (c) ADDITIONAL CONFORMING AMENDMENTS.—

17 (1) Section 23(c), as in effect for taxable years  
 18 beginning before January 1, 2004, and as amended  
 19 by this Act, is amended by inserting “, 25D,” after  
 20 “sections 25C”.

21 (2) Section 25(e)(1)(C), as in effect for taxable  
 22 years beginning before January 1, 2004, and as  
 23 amended by this Act, is amended by inserting  
 24 “25D,” after “25C,”.

1           (3) Subsection (a) of section 1016, as amended  
 2           by this Act, is amended by striking “and” at the end  
 3           of paragraph (32), by striking the period at the end  
 4           of paragraph (33) and inserting “; and”, and by  
 5           adding at the end the following new paragraph:

6           “(34) to the extent provided in section 25D(f),  
 7           in the case of amounts with respect to which a credit  
 8           has been allowed under section 25D.”.

9           (4) Section 1400C(d), as in effect for taxable  
 10          years beginning before January 1, 2004, and as  
 11          amended by this Act, is amended by striking “sec-  
 12          tion 25C” and inserting “sections 25C and 25D”.

13          (5) The table of sections for subpart A of part  
 14          IV of subchapter A of chapter 1, as amended by this  
 15          Act, is amended by inserting after the item relating  
 16          to section 25C the following new item:

            “Sec. 25D. Energy efficiency improvements to existing homes.”.

17          (d) EFFECTIVE DATES.—

18           (1) IN GENERAL.—Except as provided by para-  
 19           graph (2), the amendments made by this section  
 20           shall apply to expenditures after the date of the en-  
 21           actment of this Act, in taxable years ending after  
 22           such date.

23           (2) SUBSECTION (b).—The amendments made  
 24           by subsection (b) shall apply to taxable years begin-  
 25           ning after December 31, 2003.

1 **SEC. 310. ALLOWANCE OF DEDUCTION FOR QUALIFIED**  
2 **NEW OR RETROFITTED WATER SUB-**  
3 **METERING DEVICES.**

4 (a) IN GENERAL.—Part VI of subchapter B of chap-  
5 ter 1 (relating to itemized deductions for individuals and  
6 corporations), as amended by section 503, is amended by  
7 inserting after section 179D the following new section:

8 **“SEC. 179E. DEDUCTION FOR QUALIFIED NEW OR RETRO-**  
9 **FITTED WATER SUBMETERING DEVICES.**

10 “(a) ALLOWANCE OF DEDUCTION.—In the case of a  
11 taxpayer who is an eligible resupplier, there shall be al-  
12 lowed as a deduction an amount equal to the cost of each  
13 qualified water submetering device placed in service during  
14 the taxable year.

15 “(b) MAXIMUM DEDUCTION.—The deduction allowed  
16 by this section with respect to each qualified water sub-  
17 metering device shall not exceed \$30.

18 “(c) ELIGIBLE RESUPPLIER.—For purposes of this  
19 section, the term ‘eligible resupplier’ means any taxpayer  
20 who purchases and installs qualified water submetering  
21 devices in every unit in any multi-unit property.

22 “(d) QUALIFIED WATER SUBMETERING DEVICE.—  
23 The term ‘qualified water submetering device’ means any  
24 tangible property to which section 168 applies if such  
25 property is a submetering device (including ancillary  
26 equipment)—

1           “(1) which is purchased and installed by the  
2           taxpayer to enable consumers to manage their pur-  
3           chase or use of water in response to water price and  
4           usage signals, and

5           “(2) which permits reading of water price and  
6           usage signals on at least a daily basis.

7           “(e) PROPERTY USED OUTSIDE THE UNITED  
8 STATES NOT QUALIFIED.—No deduction shall be allowed  
9 under subsection (a) with respect to property which is  
10 used predominantly outside the United States or with re-  
11 spect to the portion of the cost of any property taken into  
12 account under section 179.

13          “(f) BASIS REDUCTION.—

14           “(1) IN GENERAL.—For purposes of this title,  
15           the basis of any property shall be reduced by the  
16           amount of the deduction with respect to such prop-  
17           erty which is allowed by subsection (a).

18           “(2) ORDINARY INCOME RECAPTURE.—For  
19           purposes of section 1245, the amount of the deduc-  
20           tion allowable under subsection (a) with respect to  
21           any property that is of a character subject to the al-  
22           lowance for depreciation shall be treated as a deduc-  
23           tion allowed for depreciation under section 167.

24           “(g) TERMINATION.—This section shall not apply to  
25 any property placed in service after December 31, 2007.”.



1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 263(a)(1), as amended by section  
3 503, is amended by striking “or” at the end of sub-  
4 paragraph (J), by striking the period at the end of  
5 subparagraph (K) and inserting “, or”, and by in-  
6 serting after subparagraph (K) the following new  
7 subparagraph:

8 “(L) expenditures for which a deduction is  
9 allowed under section 179E.”.

10 (2) Section 312(k)(3)(B), as amended by sec-  
11 tion 503, is amended by striking “or 179D” each  
12 place it appears in the heading and text and insert-  
13 ing “, 179D, or 179E”.

14 (3) Section 1016(a), as amended by section  
15 503, is amended by striking “and” at the end of  
16 paragraph (34), by striking the period at the end of  
17 paragraph (35) and inserting “, and”, and by add-  
18 ing at the end the following new paragraph:

19 “(36) to the extent provided in section  
20 179E(f)(1).”.

21 (4) Section 1245(a), as amended by section  
22 503, is amended by inserting “179E,” after  
23 “179D,” both places it appears in paragraphs (2)(C)  
24 and (3)(C).

1           (5) The table of contents for subpart B of part  
 2           IV of subchapter A of chapter 1, as amended by sec-  
 3           tion 503, is amended by inserting after the item re-  
 4           lating to section 179D the following new item:

“Sec. 179E. Deduction for qualified new or retrofitted water sub-  
 metering devices.”.

5           (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to qualified water submetering de-  
 7 vices placed in service after the date of the enactment of  
 8 this Act, in taxable years ending after such date.

9   **SEC. 311. THREE-YEAR APPLICABLE RECOVERY PERIOD**  
 10                           **FOR DEPRECIATION OF QUALIFIED WATER**  
 11                           **SUBMETERING DEVICES.**

12           (a) IN GENERAL.—Subparagraph (A) of section  
 13 168(e)(3) (relating to classification of property), as  
 14 amended by this Act, is amended by striking “and” at the  
 15 end of clause (iii), by striking the period at the end of  
 16 clause (iv) and inserting “, and”, and by adding at the  
 17 end the following new clause:

18                           “(v) any qualified water submetering  
 19                           device.”.

20           (b) DEFINITION OF QUALIFIED WATER SUB-  
 21 METERING DEVICE.—Section 168(i) (relating to defini-  
 22 tions and special rules), as amended by this Act, is amend-  
 23 ed by inserting at the end the following new paragraph:

1           “(16) QUALIFIED WATER SUBMETERING DE-  
 2           VICE.—The term ‘qualified water submetering de-  
 3           vice’ means any qualified water submetering device  
 4           (as defined in section 179E(d)) which is placed in  
 5           service before January 1, 2008, by a taxpayer who  
 6           is an eligible resupplier (as defined in section  
 7           179E(c)).’”.

8           (c) EFFECTIVE DATE.—The amendments made by  
 9           this section shall apply to property placed in service after  
 10          the date of the enactment of this Act, in taxable years  
 11          ending after such date.

12                   **TITLE IV—CLEAN COAL**  
 13                   **INCENTIVES**  
 14           **Subtitle A—Credit for Emission Re-**  
 15           **ductions and Efficiency Im-**  
 16           **provements in Existing Coal-**  
 17           **Based Electricity Generation**  
 18           **Facilities**

19   **SEC. 401. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 20                   **CLEAN COAL TECHNOLOGY UNIT.**

21           (a) CREDIT FOR PRODUCTION FROM A QUALIFYING  
 22   CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV  
 23   of subchapter A of chapter 1 (relating to business related  
 24   credits), as amended by this Act, is amended by adding  
 25   at the end the following new section:

1   **“SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
2                   **CLEAN COAL TECHNOLOGY UNIT.**

3           “(a) GENERAL RULE.—For purposes of section 38,  
4 the qualifying clean coal technology production credit of  
5 any taxpayer for any taxable year is equal to the product  
6 of—

7                   “(1) the applicable amount of clean coal tech-  
8 nology production credit, multiplied by

9                   “(2) the applicable percentage of the kilowatt  
10 hours of electricity produced by the taxpayer during  
11 such taxable year at a qualifying clean coal tech-  
12 nology unit, but only if such production occurs dur-  
13 ing the 10-year period beginning on the date the  
14 unit was returned to service after becoming a quali-  
15 fying clean coal technology unit.

16           “(b) APPLICABLE AMOUNT.—

17                   “(1) IN GENERAL.—For purposes of this sec-  
18 tion, the applicable amount of clean coal technology  
19 production credit is equal to \$0.0034.

20                   “(2) INFLATION ADJUSTMENT.—For calendar  
21 years after 2004, the applicable amount of clean coal  
22 technology production credit shall be adjusted by  
23 multiplying such amount by the inflation adjustment  
24 factor for the calendar year in which the amount is  
25 applied. If any amount as increased under the pre-  
26 ceding sentence is not a multiple of 0.01 cent, such

1 amount shall be rounded to the nearest multiple of  
 2 0.01 cent.

3 “(c) APPLICABLE PERCENTAGE.—For purposes of  
 4 this section, with respect to any qualifying clean coal tech-  
 5 nology unit, the applicable percentage is the percentage  
 6 equal to the ratio which the portion of the national mega-  
 7 watt capacity limitation allocated to the taxpayer with re-  
 8 spect to such unit under subsection (e) bears to the total  
 9 megawatt capacity of such unit.

10 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
 11 poses of this section—

12 “(1) QUALIFYING CLEAN COAL TECHNOLOGY  
 13 UNIT.—The term ‘qualifying clean coal technology  
 14 unit’ means a clean coal technology unit of the tax-  
 15 payer which—

16 “(A) on the date of the enactment of this  
 17 section was a coal-based electricity generating  
 18 steam generator-turbine unit which was not a  
 19 clean coal technology unit,

20 “(B) has a nameplate capacity rating of  
 21 not more than 300,000 kilowatts,

22 “(C) becomes a clean coal technology unit  
 23 as the result of the retrofitting, repowering, or  
 24 replacement of the unit with clean coal tech-

1 nology during the 10-year period beginning on  
2 the date of the enactment of this section,

3 “(D) is not receiving nor is scheduled to  
4 receive funding under the Clean Coal Tech-  
5 nology Program, the Power Plant Improvement  
6 Initiative, or the Clean Coal Power Initiative  
7 administered by the Secretary of Energy, and

8 “(E) receives an allocation of a portion of  
9 the national megawatt capacity limitation under  
10 subsection (e).

11 “(2) CLEAN COAL TECHNOLOGY UNIT.—The  
12 term ‘clean coal technology unit’ means a unit  
13 which—

14 “(A) uses clean coal technology, including  
15 advanced pulverized coal or atmospheric fluid-  
16 ized bed combustion, pressurized fluidized bed  
17 combustion, integrated gasification combined  
18 cycle, or any other technology for the produc-  
19 tion of electricity,

20 “(B) uses coal to produce 75 percent or  
21 more of its thermal output as electricity,

22 “(C) has a design net heat rate of at least  
23 500 less than that of such unit as described in  
24 paragraph (1)(A),

1           “(D) has a maximum design net heat rate  
2           of not more than 9,500, and

3           “(E) meets the pollution control require-  
4           ments of paragraph (3).

5           “(3) POLLUTION CONTROL REQUIREMENTS.—

6           “(A) IN GENERAL.—A unit meets the re-  
7           quirements of this paragraph if—

8                   “(i) its emissions of sulfur dioxide, ni-  
9                   trogen oxide, or particulates meet the  
10                  lower of the emission levels for each such  
11                  emission specified in—

12                           “(I) subparagraph (B), or

13                           “(II) the new source performance  
14                          standards of the Clean Air Act (42  
15                          U.S.C. 7411) which are in effect for  
16                          the category of source at the time of  
17                          the retrofitting, repowering, or re-  
18                          placement of the unit, and

19                           “(ii) its emissions do not exceed any  
20                          relevant emission level specified by regula-  
21                          tion pursuant to the hazardous air pollut-  
22                          ant requirements of the Clean Air Act (42  
23                          U.S.C. 7412) in effect at the time of the  
24                          retrofitting, repowering, or replacement.

1           “(B) SPECIFIC LEVELS.—The levels speci-  
2           fied in this subparagraph are—

3                   “(i) in the case of sulfur dioxide emis-  
4                   sions, 50 percent of the sulfur dioxide  
5                   emission levels specified in the new source  
6                   performance standards of the Clean Air  
7                   Act (42 U.S.C. 7411) in effect on the date  
8                   of the enactment of this section for the  
9                   category of source,

10                   “(ii) in the case of nitrogen oxide  
11                   emissions—

12                           “(I) 0.1 pound per million Btu of  
13                           heat input if the unit is not a cyclone-  
14                           fired boiler, and

15                           “(II) if the unit is a cyclone-fired  
16                           boiler, 15 percent of the uncontrolled  
17                           nitrogen oxide emissions from such  
18                           boilers, and

19                           “(iii) in the case of particulate emis-  
20                           sions, 0.02 pound per million Btu of heat  
21                           input.

22           “(4) DESIGN NET HEAT RATE.—The design net  
23           heat rate with respect to any unit, measured in Btu  
24           per kilowatt hour (HHV)—



1           “(A) shall be based on the design annual  
 2           heat input to and the design annual net elec-  
 3           trical output from such unit (determined with-  
 4           out regard to such unit’s co-generation of  
 5           steam),

6           “(B) shall be adjusted for the heat content  
 7           of the design coal to be used by the unit if it  
 8           is less than 12,000 Btu per pound according to  
 9           the following formula:

10          Design net heat rate = Unit net heat rate  $\times$  [1 –  
 11          {((12,000-design coal heat content, Btu per pound)/  
 12          1,000)  $\times$  0.013}], and

13           “(C) shall be corrected for the site ref-  
 14           erence conditions of—

15           “(i) elevation above sea level of 500 feet,

16           “(ii) air pressure of 14.4 pounds per square  
 17          inch absolute (psia),

18           “(iii) temperature, dry bulb of 63°F,

19           “(iv) temperature, wet bulb of 54°F, and

20           “(v) relative humidity of 55 percent.

21           “(5) HHV.—The term ‘HHV’ means higher  
 22          heating value.

23           “(6) APPLICATION OF CERTAIN RULES.—The  
 24          rules of paragraphs (3), (4), and (5) of section 45(d)  
 25          shall apply.

1 “(7) INFLATION ADJUSTMENT FACTOR.—

2 “(A) IN GENERAL.—The term ‘inflation  
3 adjustment factor’ means, with respect to a cal-  
4 endar year, a fraction the numerator of which  
5 is the GDP implicit price deflator for the pre-  
6 ceding calendar year and the denominator of  
7 which is the GDP implicit price deflator for the  
8 calendar year 2003.

9 “(B) GDP IMPLICIT PRICE DEFLATOR.—

10 The term ‘GDP implicit price deflator’ means  
11 the most recent revision of the implicit price  
12 deflator for the gross domestic product as com-  
13 puted by the Department of Commerce before  
14 March 15 of the calendar year.

15 “(8) NONCOMPLIANCE WITH POLLUTION  
16 LAWS.—For purposes of this section, a unit which is  
17 not in compliance with the applicable State and Fed-  
18 eral pollution prevention, control, and permit re-  
19 quirements for any period of time shall not be con-  
20 sidered to be a qualifying clean coal technology unit  
21 during such period.

22 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-  
23 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY  
24 UNITS.—

1           “(1) IN GENERAL.—For purposes of subsection  
2           (d)(1)(E), the national megawatt capacity limitation  
3           for qualifying clean coal technology units is 4,000  
4           megawatts.

5           “(2) ALLOCATION OF LIMITATION.—The Sec-  
6           retary shall allocate the national megawatt capacity  
7           limitation for qualifying clean coal technology units  
8           in such manner as the Secretary may prescribe  
9           under the regulations under paragraph (3).

10          “(3) REGULATIONS.—Not later than 6 months  
11          after the date of the enactment of this section, the  
12          Secretary shall prescribe such regulations as may be  
13          necessary or appropriate—

14               “(A) to carry out the purposes of this sub-  
15               section,

16               “(B) to limit the capacity of any qualifying  
17               clean coal technology unit to which this section  
18               applies so that the combined megawatt capacity  
19               allocated to all such units under this subsection  
20               when all such units are placed in service during  
21               the 10-year period described in subsection  
22               (d)(1)(C), does not exceed 4,000 megawatts,

23               “(C) to provide a certification process  
24               under which the Secretary, in consultation with  
25               the Secretary of Energy, shall approve and allo-

1           cate the national megawatt capacity limita-  
2           tion—

3                   “(i) to encourage that units with the  
4                   highest thermal efficiencies, when adjusted  
5                   for the heat content of the design coal and  
6                   site reference conditions described in sub-  
7                   section (d)(4)(C), and environmental per-  
8                   formance be placed in service as soon as  
9                   possible, and

10                   “(ii) to allocate capacity to taxpayers  
11                   that have a definite and credible plan for  
12                   placing into commercial operation a quali-  
13                   fying clean coal technology unit, includ-  
14                   ing—

15                           “(I) a site,

16                           “(II) contractual commitments  
17                           for procurement and construction or,  
18                           in the case of regulated utilities, the  
19                           agreement of the State utility commis-  
20                           sion,

21                           “(III) filings for all necessary  
22                           preconstruction approvals,

23                           “(IV) a demonstrated record of  
24                           having successfully completed com-  
25                           parable projects on a timely basis, and

1                   “(V) such other factors that the  
2                   Secretary determines are appropriate,  
3                   “(D) to allocate the national megawatt ca-  
4                   pacity limitation to a portion of the capacity of  
5                   a qualifying clean coal technology unit if the  
6                   Secretary determines that such an allocation  
7                   would maximize the amount of efficient produc-  
8                   tion encouraged with the available tax credits,  
9                   “(E) to set progress requirements and con-  
10                  ditional approvals so that capacity allocations  
11                  for clean coal technology units that become un-  
12                  likely to meet the necessary conditions for  
13                  qualifying can be reallocated by the Secretary  
14                  to other clean coal technology units, and  
15                  “(F) to provide taxpayers with opportuni-  
16                  ties to correct administrative errors and omis-  
17                  sions with respect to allocations and record  
18                  keeping within a reasonable period after dis-  
19                  covery, taking into account the availability of  
20                  regulations and other administrative guidance  
21                  from the Secretary.”.

22           (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
23   tion 38(b), as amended by this Act, is amended by striking  
24   “plus” at the end of paragraph (18), by striking the period

1 at the end of paragraph (19) and inserting “, plus”, and  
2 by adding at the end the following new paragraph:

3 “(20) the qualifying clean coal technology pro-  
4 duction credit determined under section 45I(a).”.

5 (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
6 transitional rules), as amended by this Act, is amended  
7 by adding at the end the following new paragraph:

8 “(16) NO CARRYBACK OF SECTION 45I CREDIT  
9 BEFORE EFFECTIVE DATE.—No portion of the un-  
10 used business credit for any taxable year which is  
11 attributable to the qualifying clean coal technology  
12 production credit determined under section 45I may  
13 be carried back to a taxable year ending on or before  
14 the date of the enactment of such section.”.

15 (d) CLERICAL AMENDMENT.—The table of sections  
16 for subpart D of part IV of subchapter A of chapter 1,  
17 as amended by this Act, is amended by adding at the end  
18 the following new item:

“Sec. 45I. Credit for production from a qualifying clean coal technology unit.”.

19 (e) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to production after the date of the  
21 enactment of this Act, in taxable years ending after such  
22 date.

1 **Subtitle B—Incentives for Early**  
 2 **Commercial Applications of Ad-**  
 3 **vanced Clean Coal Technologies**

4 **SEC. 411. CREDIT FOR INVESTMENT IN QUALIFYING AD-**  
 5 **VANCED CLEAN COAL TECHNOLOGY.**

6 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN  
 7 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating  
 8 to amount of credit) is amended by striking “and” at the  
 9 end of paragraph (2), by striking the period at the end  
 10 of paragraph (3) and inserting “, and”, and by adding  
 11 at the end the following new paragraph:

12 “(4) the qualifying advanced clean coal tech-  
 13 nology unit credit.”.

14 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN  
 15 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part  
 16 IV of subchapter A of chapter 1 (relating to rules for com-  
 17 puting investment credit) is amended by inserting after  
 18 section 48 the following new section:

19 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**  
 20 **NOLOGY UNIT CREDIT.**

21 “(a) IN GENERAL.—For purposes of section 46, the  
 22 qualifying advanced clean coal technology unit credit for  
 23 any taxable year is an amount equal to 10 percent of the  
 24 applicable percentage of the qualified investment in a

1 qualifying advanced clean coal technology unit for such  
2 taxable year.

3 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-  
4 NOLOGY UNIT.—

5 “(1) IN GENERAL.—For purposes of subsection  
6 (a), the term ‘qualifying advanced clean coal tech-  
7 nology unit’ means an advanced clean coal tech-  
8 nology unit of the taxpayer—

9 “(A)(i)(I) in the case of a unit first placed  
10 in service after the date of the enactment of  
11 this section, the original use of which com-  
12 mences with the taxpayer, or

13 “(II) in the case of the retrofitting or  
14 repowering of a unit first placed in service be-  
15 fore such date of enactment, the retrofitting or  
16 repowering of which is completed by the tax-  
17 payer after such date, or

18 “(ii) which is acquired through purchase  
19 (as defined by section 179(d)(2)),

20 “(B) which is depreciable under section  
21 167,

22 “(C) which has a useful life of not less  
23 than 4 years,

24 “(D) which is located in the United States,



1           “(E) which is not receiving nor is sched-  
 2           uled to receive funding under the Clean Coal  
 3           Technology Program, the Power Plant Improve-  
 4           ment Initiative, or the Clean Coal Power Initia-  
 5           tive administered by the Secretary of Energy,

6           “(F) which is not a qualifying clean coal  
 7           technology unit, and

8           “(G) which receives an allocation of a por-  
 9           tion of the national megawatt capacity limita-  
 10          tion under subsection (f).

11          “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—  
 12          For purposes of subparagraph (A) of paragraph (1),  
 13          in the case of a unit which—

14               “(A) is originally placed in service by a  
 15               person, and

16               “(B) is sold and leased back by such per-  
 17               son, or is leased to such person, within 3  
 18               months after the date such unit was originally  
 19               placed in service, for a period of not less than  
 20               12 years,

21          such unit shall be treated as originally placed in  
 22          service not earlier than the date on which such unit  
 23          is used under the leaseback (or lease) referred to in  
 24          subparagraph (B). The preceding sentence shall not  
 25          apply to any property if the lessee and lessor of such

1       property make an election under this sentence. Such  
 2       an election, once made, may be revoked only with  
 3       the consent of the Secretary.

4           “(3) NONCOMPLIANCE WITH POLLUTION  
 5       LAWS.—For purposes of this subsection, a unit  
 6       which is not in compliance with the applicable State  
 7       and Federal pollution prevention, control, and per-  
 8       mit requirements for any period of time shall not be  
 9       considered to be a qualifying advanced clean coal  
 10      technology unit during such period.

11       “(c) APPLICABLE PERCENTAGE.—For purposes of  
 12      this section, with respect to any qualifying advanced clean  
 13      coal technology unit, the applicable percentage is the per-  
 14      centage equal to the ratio which the portion of the national  
 15      megawatt capacity limitation allocated to the taxpayer  
 16      with respect to such unit under subsection (f) bears to  
 17      the total megawatt capacity of such unit.

18       “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—  
 19      For purposes of this section—

20           “(1) IN GENERAL.—The term ‘advanced clean  
 21      coal technology unit’ means a new, retrofit, or  
 22      repowering unit of the taxpayer which—

23           “(A) is—

1 “(i) an eligible advanced pulverized  
2 coal or atmospheric fluidized bed combus-  
3 tion technology unit,

4 “(ii) an eligible pressurized fluidized  
5 bed combustion technology unit,

6 “(iii) an eligible integrated gasifi-  
7 cation combined cycle technology unit, or

8 “(iv) an eligible other technology unit,  
9 and

10 “(B) meets the carbon emission rate re-  
11 quirements of paragraph (6).

12 “(2) ELIGIBLE ADVANCED PULVERIZED COAL  
13 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION  
14 TECHNOLOGY UNIT.—The term ‘eligible advanced  
15 pulverized coal or atmospheric fluidized bed combus-  
16 tion technology unit’ means a clean coal technology  
17 unit using advanced pulverized coal or atmospheric  
18 fluidized bed combustion technology which—

19 “(A) is placed in service after the date of  
20 the enactment of this section and before Janu-  
21 ary 1, 2013, and

22 “(B) has a design net heat rate of not  
23 more than 8,350 (8,750 in the case of units  
24 placed in service before 2009).

1           “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED  
2 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-  
3 ble pressurized fluidized bed combustion technology  
4 unit’ means a clean coal technology unit using pres-  
5 surized fluidized bed combustion technology which—

6           “(A) is placed in service after the date of  
7 the enactment of this section and before Janu-  
8 ary 1, 2017, and

9           “(B) has a design net heat rate of not  
10 more than 7,720 (8,750 in the case of units  
11 placed in service before 2009, and 8,350 in the  
12 case of units placed in service after 2008 and  
13 before 2013).

14           “(4) ELIGIBLE INTEGRATED GASIFICATION  
15 COMBINED CYCLE TECHNOLOGY UNIT.—The term  
16 ‘eligible integrated gasification combined cycle tech-  
17 nology unit’ means a clean coal technology unit  
18 using integrated gasification combined cycle tech-  
19 nology, with or without fuel or chemical co-produc-  
20 tion, which—

21           “(A) is placed in service after the date of  
22 the enactment of this section and before Janu-  
23 ary 1, 2017,

24           “(B) has a design net heat rate of not  
25 more than 7,720 (8,750 in the case of units

placed in service before 2009, and 8,350 in the case of units placed in service after 2008 and before 2013), and

“(C) has a net thermal efficiency (HHV) using coal with fuel or chemical co-production of not less than 43.9 percent (39 percent in the case of units placed in service before 2009, and 40.9 percent in the case of units placed in service after 2008 and before 2013).

“(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—

The term ‘eligible other technology unit’ means a clean coal technology unit using any other technology for the production of electricity which is placed in service after the date of the enactment of this section and before January 1, 2017.

“(6) CARBON EMISSION RATE REQUIREMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a unit meets the requirements of this paragraph if—

“(i) in the case of a unit using design coal with a heat content of not more than 9,000 Btu per pound, the carbon emission rate is less than 0.60 pound of carbon per kilowatt hour, and

1                   “(ii) in the case of a unit using design  
2                   coal with a heat content of more than  
3                   9,000 Btu per pound, the carbon emission  
4                   rate is less than 0.54 pound of carbon per  
5                   kilowatt hour.

6                   “(B) ELIGIBLE OTHER TECHNOLOGY  
7                   UNIT.—In the case of an eligible other tech-  
8                   nology unit, subparagraph (A) shall be applied  
9                   by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and  
10                  ‘0.54’, respectively.

11                  “(e) GENERAL DEFINITIONS.—Any term used in this  
12                  section which is also used in section 45I shall have the  
13                  meaning given such term in section 45I.

14                  “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-  
15                  PACITY OF ADVANCED CLEAN COAL TECHNOLOGY  
16                  UNITS.—

17                  “(1) IN GENERAL.—For purposes of subsection  
18                  (b)(1)(G), the national megawatt capacity limitation  
19                  is—

20                  “(A) for qualifying advanced clean coal  
21                  technology units using advanced pulverized coal  
22                  or atmospheric fluidized bed combustion tech-  
23                  nology, not more than 1,000 megawatts (not  
24                  more than 500 megawatts in the case of units  
25                  placed in service before 2009),

1           “(B) for such units using pressurized flu-  
2           idized bed combustion technology, not more  
3           than 500 megawatts (not more than 250  
4           megawatts in the case of units placed in service  
5           before 2009),

6           “(C) for such units using integrated gasifi-  
7           cation combined cycle technology, with or with-  
8           out fuel or chemical co-production, not more  
9           than 2,000 megawatts (not more than 1,000  
10          megawatts in the case of units placed in service  
11          before 2009 and not more than 1,500  
12          megawatts in the case of units placed in service  
13          after 2008 and before 2013), and

14          “(D) for such units using other technology  
15          for the production of electricity, not more than  
16          500 megawatts (not more than 250 megawatts  
17          in the case of units placed in service before  
18          2009).

19          “(2) ALLOCATION OF LIMITATION.—The Sec-  
20          retary shall allocate the national megawatt capacity  
21          limitation for qualifying advanced clean coal tech-  
22          nology units in such manner as the Secretary may  
23          prescribe under the regulations under paragraph (3).

24          “(3) REGULATIONS.—Not later than 6 months  
25          after the date of the enactment of this section, the

1 Secretary shall prescribe such regulations as may be  
2 necessary or appropriate—

3 “(A) to carry out the purposes of this sub-  
4 section and section 45J,

5 “(B) to limit the capacity of any qualifying  
6 advanced clean coal technology unit to which  
7 this section applies so that the combined mega-  
8 watt capacity of all such units to which this sec-  
9 tion applies does not exceed 4,000 megawatts,

10 “(C) to provide a certification process de-  
11 scribed in section 45I(e)(3)(C),

12 “(D) to carry out the purposes described  
13 in subparagraphs (D), (E), and (F) of section  
14 45I(e)(3), and

15 “(E) to reallocate capacity which is not al-  
16 located to any technology described in subpara-  
17 graphs (A) through (D) of paragraph (1) be-  
18 cause an insufficient number of qualifying units  
19 request an allocation for such technology, to an-  
20 other technology described in such subpara-  
21 graphs in order to maximize the amount of en-  
22 ergy efficient production encouraged with the  
23 available tax credits.

24 “(4) SELECTION CRITERIA.—For purposes of  
25 paragraph (3)(C), the selection criteria for allocating



1 the national megawatt capacity limitation to quali-  
 2 fying advanced clean coal technology units—

3 “(A) shall be established by the Secretary  
 4 of Energy as part of a competitive solicitation,

5 “(B) shall include primary criteria of min-  
 6 imum design net heat rate, maximum design  
 7 thermal efficiency, environmental performance,  
 8 and lowest cost to the Government, and

9 “(C) shall include supplemental criteria as  
 10 determined appropriate by the Secretary of En-  
 11 ergy.

12 “(g) QUALIFIED INVESTMENT.—For purposes of  
 13 subsection (a), the term ‘qualified investment’ means, with  
 14 respect to any taxable year, the basis of a qualifying ad-  
 15 vanced clean coal technology unit placed in service by the  
 16 taxpayer during such taxable year (in the case of a unit  
 17 described in subsection (b)(1)(A)(i)(II), only that portion  
 18 of the basis of such unit which is properly attributable  
 19 to the retrofitting or repowering of such unit).

20 “(h) QUALIFIED PROGRESS EXPENDITURES.—

21 “(1) INCREASE IN QUALIFIED INVESTMENT.—

22 In the case of a taxpayer who has made an election  
 23 under paragraph (5), the amount of the qualified in-  
 24 vestment of such taxpayer for the taxable year (de-  
 25 termined under subsection (g) without regard to this

subsection) shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

“(2) PROGRESS EXPENDITURE PROPERTY DEFINED.—For purposes of this subsection, the term ‘progress expenditure property’ means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a qualifying advanced clean coal technology unit which is being constructed by or for the taxpayer when it is placed in service.

“(3) QUALIFIED PROGRESS EXPENDITURES DEFINED.—For purposes of this subsection—

“(A) SELF-CONSTRUCTED PROPERTY.—In the case of any self-constructed property, the term ‘qualified progress expenditures’ means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

“(B) NONSELF-CONSTRUCTED PROPERTY.—In the case of nonself-constructed property, the term ‘qualified progress expenditures’ means the amount paid during the taxable year

1 to another person for the construction of such  
2 property.

3 “(4) OTHER DEFINITIONS.—For purposes of  
4 this subsection—

5 “(A) SELF-CONSTRUCTED PROPERTY.—  
6 The term ‘self-constructed property’ means  
7 property for which it is reasonable to believe  
8 that more than half of the construction expendi-  
9 tures will be made directly by the taxpayer.

10 “(B) NONSELF-CONSTRUCTED PROP-  
11 ERTY.—The term ‘nonself-constructed property’  
12 means property which is not self-constructed  
13 property.

14 “(C) CONSTRUCTION, ETC.—The term  
15 ‘construction’ includes reconstruction and erec-  
16 tion, and the term ‘constructed’ includes recon-  
17 structed and erected.

18 “(D) ONLY CONSTRUCTION OF QUALI-  
19 FYING ADVANCED CLEAN COAL TECHNOLOGY  
20 UNIT TO BE TAKEN INTO ACCOUNT.—Construc-  
21 tion shall be taken into account only if, for pur-  
22 poses of this subpart, expenditures therefor are  
23 properly chargeable to capital account with re-  
24 spect to the property.

1           “(5) ELECTION.—An election under this sub-  
 2           section may be made at such time and in such man-  
 3           ner as the Secretary may by regulations prescribe.  
 4           Such an election shall apply to the taxable year for  
 5           which made and to all subsequent taxable years.  
 6           Such an election, once made, may not be revoked ex-  
 7           cept with the consent of the Secretary.

8           “(i) COORDINATION WITH OTHER CREDITS.—This  
 9           section shall not apply to any property with respect to  
 10          which the rehabilitation credit under section 47 or the en-  
 11          ergy credit under section 48 is allowed unless the taxpayer  
 12          elects to waive the application of such credit to such prop-  
 13          erty.”.

14          (c) RECAPTURE.—Section 50(a) (relating to other  
 15          special rules) is amended by adding at the end the fol-  
 16          lowing new paragraph:

17                 “(6) SPECIAL RULES RELATING TO QUALIFYING  
 18                 ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For  
 19                 purposes of applying this subsection in the case of  
 20                 any credit allowable by reason of section 48A, the  
 21                 following shall apply:

22                         “(A) GENERAL RULE.—In lieu of the  
 23                         amount of the increase in tax under paragraph  
 24                         (1), the increase in tax shall be an amount  
 25                         equal to the investment tax credit allowed under

1 section 38 for all prior taxable years with re-  
2 spect to a qualifying advanced clean coal tech-  
3 nology unit (as defined by section 48A(b)(1))  
4 multiplied by a fraction whose numerator is the  
5 number of years remaining to fully depreciate  
6 under this title the qualifying advanced clean  
7 coal technology unit disposed of, and whose de-  
8 nominator is the total number of years over  
9 which such unit would otherwise have been sub-  
10 ject to depreciation. For purposes of the pre-  
11 ceding sentence, the year of disposition of the  
12 qualifying advanced clean coal technology unit  
13 shall be treated as a year of remaining depre-  
14 ciation.

15 “(B) PROPERTY CEASES TO QUALIFY FOR  
16 PROGRESS EXPENDITURES.—Rules similar to  
17 the rules of paragraph (2) shall apply in the  
18 case of qualified progress expenditures for a  
19 qualifying advanced clean coal technology unit  
20 under section 48A, except that the amount of  
21 the increase in tax under subparagraph (A) of  
22 this paragraph shall be substituted for the  
23 amount described in such paragraph (2).

24 “(C) APPLICATION OF PARAGRAPH.—This  
25 paragraph shall be applied separately with re-

1           spect to the credit allowed under section 38 re-  
 2           garding a qualifying advanced clean coal tech-  
 3           nology unit.”.

4           (d) TRANSITIONAL RULE.—Section 39(d) (relating to  
 5 transitional rules), as amended by this Act, is amended  
 6 by adding at the end the following new paragraph:

7           “(17) NO CARRYBACK OF SECTION 48A CREDIT  
 8 BEFORE EFFECTIVE DATE.—No portion of the un-  
 9 used business credit for any taxable year which is  
 10 attributable to the qualifying advanced clean coal  
 11 technology unit credit determined under section 48A  
 12 may be carried back to a taxable year ending on or  
 13 before the date of the enactment of such section.”.

14          (e) TECHNICAL AMENDMENTS.—

15           (1) Section 49(a)(1)(C) is amended by striking  
 16 “and” at the end of clause (ii), by striking the pe-  
 17 riod at the end of clause (iii) and inserting “, and”,  
 18 and by adding at the end the following new clause:

19                   “(iv) the portion of the basis of any  
 20                   qualifying advanced clean coal technology  
 21                   unit attributable to any qualified invest-  
 22                   ment (as defined by section 48A(g)).”.

23           (2) Section 50(a)(4) is amended by striking  
 24 “and (2)” and inserting “(2), and (6)”.

6 (4) The table of sections for subpart E of part  
7 IV of subchapter A of chapter 1 is amended by in-  
8 serting after the item relating to section 48 the fol-  
9 lowing new item:

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

16 SEC. 412. CREDIT FOR PRODUCTION FROM A QUALIFYING  
17 ADVANCED CLEAN COAL TECHNOLOGY UNIT.

18 (a) IN GENERAL.—Subpart D of part IV of sub-  
19 chapter A of chapter 1 (relating to business related cred-  
20 its), as amended by this Act, is amended by adding at  
21 the end the following new section:

1 **“SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING**  
 2 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
 4 the qualifying advanced clean coal technology production  
 5 credit of any taxpayer for any taxable year is equal to—

6 “(1) the applicable amount of advanced clean  
 7 coal technology production credit, multiplied by

8 “(2) the applicable percentage (as determined  
 9 under section 48A(c)) of the sum of—

10 “(A) the kilowatt hours of electricity, plus

11 “(B) each 3,413 Btu of fuels or chemicals,  
 12 produced by the taxpayer during such taxable year  
 13 at a qualifying advanced clean coal technology unit  
 14 during the 10-year period beginning on the date the  
 15 unit was originally placed in service (or returned to  
 16 service after becoming a qualifying advanced clean  
 17 coal technology unit).

18 “(b) APPLICABLE AMOUNT.—For purposes of this  
 19 section, the applicable amount of advanced clean coal tech-  
 20 nology production credit with respect to production from  
 21 a qualifying advanced clean coal technology unit shall be  
 22 determined as follows:

23 “(1) Where the qualifying advanced clean coal  
 24 technology unit is producing electricity only:



- 1 “(A) In the case of a unit originally placed  
2 in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,400 .....	\$.0060	\$.0038
More than 8,400 but not more than 8,550 .....	\$.0025	\$.0010
More than 8,550 but less than 8,750 .....	\$.0010	\$.0010.

- 3 “(B) In the case of a unit originally placed  
4 in service after 2008 and before 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770 .....	\$.0105	\$.0090
More than 7,770 but not more than 8,125 .....	\$.0085	\$.0068
More than 8,125 but less than 8,350 .....	\$.0075	\$.0055.

- 5 “(C) In the case of a unit originally placed  
6 in service after 2012 and before 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380 .....	\$.0140	\$.0115
More than 7,380 but not more than 7,720 .....	\$.0120	\$.0090.

- 7 “(2) Where the qualifying advanced clean coal  
8 technology unit is producing fuel or chemicals:

- 9 “(A) In the case of a unit originally placed  
10 in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent .....	\$.0060	\$.0038
Less than 40.6 but not less than 40 percent .....	\$.0025	\$.0010
Less than 40 but not less than 39 percent .....	\$.0010	\$.0010.

1 “(B) In the case of a unit originally placed  
 2 in service after 2008 and before 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.6 percent .....	\$.0105	\$.0090
Less than 43.6 but not less than 42 percent .....	\$.0085	\$.0068
Less than 42 but not less than 40.9 percent .....	\$.0075	\$.0055.

3 “(C) In the case of a unit originally placed  
 4 in service after 2012 and before 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent .....	\$.0140	\$.0115
Less than 44.2 but not less than 43.9 percent .....	\$.0120	\$.0090.

5 “(c) INFLATION ADJUSTMENT.—For calendar years  
 6 after 2004, each amount in paragraphs (1) and (2) of sub-  
 7 section (b) shall be adjusted by multiplying such amount  
 8 by the inflation adjustment factor for the calendar year  
 9 in which the amount is applied. If any amount as in-  
 10 creased under the preceding sentence is not a multiple of  
 11 0.01 cent, such amount shall be rounded to the nearest  
 12 multiple of 0.01 cent.

13 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
 14 poses of this section—

15 “(1) IN GENERAL.—Any term used in this sec-  
 16 tion which is also used in section 45I or 48A shall  
 17 have the meaning given such term in such section.

1           “(2) APPLICABLE RULES.—The rules of para-  
 2       graphs (3), (4), and (5) of section 45(d) shall  
 3       apply.”.

4       (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 5       tion 38(b), as amended by this Act, is amended by striking  
 6       “plus” at the end of paragraph (19), by striking the period  
 7       at the end of paragraph (20) and inserting “, plus”, and  
 8       by adding at the end the following new paragraph:

9           “(21) the qualifying advanced clean coal tech-  
 10       nology production credit determined under section  
 11       45J(a).”.

12       (c) TRANSITIONAL RULE.—Section 39(d) (relating to  
 13       transitional rules), as amended by this Act, is amended  
 14       by adding at the end the following new paragraph:

15           “(18) NO CARRYBACK OF SECTION 45J CREDIT  
 16       BEFORE EFFECTIVE DATE.—No portion of the un-  
 17       used business credit for any taxable year which is  
 18       attributable to the qualifying advanced clean coal  
 19       technology production credit determined under sec-  
 20       tion 45J may be carried back to a taxable year end-  
 21       ing on or before the date of the enactment of such  
 22       section.”.

23       (d) DENIAL OF DOUBLE BENEFIT.—Section 29(d)  
 24       (relating to other definitions and special rules) is amended  
 25       by adding at the end the following new paragraph:

1           “(9) DENIAL OF DOUBLE BENEFIT.—This sec-  
 2           tion shall not apply with respect to any qualified fuel  
 3           the production of which may be taken into account  
 4           for purposes of determining the credit under section  
 5           45J.”.

6           (e) CLERICAL AMENDMENT.—The table of sections  
 7           for subpart D of part IV of subchapter A of chapter 1,  
 8           as amended by this Act, is amended by adding at the end  
 9           the following new item:

“Sec. 45J. Credit for production from a qualifying advanced clean coal tech-  
 nology unit.”.

10          (f) EFFECTIVE DATE.—The amendments made by  
 11          this section shall apply to production after the date of the  
 12          enactment of this Act, in taxable years ending after such  
 13          date.

## 14       **Subtitle C—Treatment of Persons** 15       **Not Able To Use Entire Credit**

### 16       **SEC. 421. TREATMENT OF PERSONS NOT ABLE TO USE EN-** 17       **TIRE CREDIT.**

18          (a) IN GENERAL.—Section 45I, as added by this Act,  
 19          is amended by adding at the end the following new sub-  
 20          section:

21          “(f) TREATMENT OF PERSON NOT ABLE TO USE  
 22          ENTIRE CREDIT.—

23          “(1) ALLOWANCE OF CREDITS.—

1           “(A) IN GENERAL.—Any credit allowable  
 2           under this section, section 45J, or section 48A  
 3           with respect to a facility owned by a person de-  
 4           scribed in subparagraph (B) may be transferred  
 5           or used as provided in this subsection, and the  
 6           determination as to whether the credit is allow-  
 7           able shall be made without regard to the tax-  
 8           exempt status of the person.

9           “(B) PERSONS DESCRIBED.—A person is  
 10          described in this subparagraph if the person  
 11          is—

12               “(i) an organization described in sec-  
 13               tion 501(c)(12)(C) and exempt from tax  
 14               under section 501(a),

15               “(ii) an organization described in sec-  
 16               tion 1381(a)(2)(C),

17               “(iii) a public utility (as defined in  
 18               section 136(c)(2)(B)),

19               “(iv) any State or political subdivision  
 20               thereof, the District of Columbia, or any  
 21               agency or instrumentality of any of the  
 22               foregoing,

23               “(v) any Indian tribal government  
 24               (within the meaning of section 7871) or  
 25               any agency or instrumentality thereof, or

1 “(vi) the Tennessee Valley Authority.

2 “(2) TRANSFER OF CREDIT.—

3 “(A) IN GENERAL.—A person described in  
4 clause (i), (ii), (iii), (iv), or (v) of paragraph  
5 (1)(B) may transfer any credit to which para-  
6 graph (1)(A) applies through an assignment to  
7 any other person not described in paragraph  
8 (1)(B). Such transfer may be revoked only with  
9 the consent of the Secretary.

10 “(B) REGULATIONS.—The Secretary shall  
11 prescribe such regulations as necessary to in-  
12 sure that any credit described in subparagraph  
13 (A) is claimed once and not reassigned by such  
14 other person.

15 “(C) TRANSFER PROCEEDS TREATED AS  
16 ARISING FROM ESSENTIAL GOVERNMENT FUNC-  
17 TION.—Any proceeds derived by a person de-  
18 scribed in clause (iii), (iv), or (v) of paragraph  
19 (1)(B) from the transfer of any credit under  
20 subparagraph (A) shall be treated as arising  
21 from the exercise of an essential government  
22 function.

23 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-  
24 standing any other provision of law, in the case of  
25 a person described in clause (i), (ii), or (v) of para-

graph (1)(B), any credit to which paragraph (1)(A) applies may be applied by such person, to the extent provided by the Secretary of Agriculture, as a prepayment of any loan, debt, or other obligation the entity has incurred under subchapter I of chapter 31 of title 7 of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.), as in effect on the date of the enactment of this section.

“(4) USE BY TVA.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in paragraph (1)(B)(vi), any credit to which paragraph (1)(A) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

“(B) TREATMENT OF CREDITS.—The aggregate amount of credits described in paragraph (1)(A) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash

1 and shall be applied first against the annual re-  
2 turn on the appropriations investment.

3 “(C) CREDIT CARRYOVER.—With respect  
4 to any fiscal year, if the aggregate amount of  
5 credits described paragraph (1)(A) with respect  
6 to such person exceeds the aggregate amount of  
7 payment obligations described in subparagraph  
8 (A), the excess amount shall remain available  
9 for application as credits against the amounts  
10 of such payment obligations in succeeding fiscal  
11 years in the same manner as described in this  
12 paragraph.

13 “(5) CREDIT NOT INCOME.—Any transfer  
14 under paragraph (2) or use under paragraph (3) of  
15 any credit to which paragraph (1)(A) applies shall  
16 not be treated as income for purposes of section  
17 501(c)(12).

18 “(6) TREATMENT OF UNRELATED PERSONS.—  
19 For purposes of this subsection, sales among and be-  
20 tween persons described in clauses (i), (ii), (iii), (iv),  
21 and (v) of paragraph (1)(A) shall be treated as sales  
22 between unrelated parties.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply to production after the date of the



1 enactment of this Act, in taxable years ending after such  
 2 date.

## 3 **TITLE V—OIL AND GAS** 4 **PROVISIONS**

### 5 **SEC. 501. OIL AND GAS FROM MARGINAL WELLS.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-  
 7 chapter A of chapter 1 (relating to business credits), as  
 8 amended by this Act, is amended by adding at the end  
 9 the following new section:

#### 10 **“SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM** 11 **MARGINAL WELLS.**

12 “(a) GENERAL RULE.—For purposes of section 38,  
 13 the marginal well production credit for any taxable year  
 14 is an amount equal to the product of—

15 “(1) the credit amount, and

16 “(2) the qualified credit oil production and the  
 17 qualified natural gas production which is attrib-  
 18 utable to the taxpayer.

19 “(b) CREDIT AMOUNT.—For purposes of this sec-  
 20 tion—

21 “(1) IN GENERAL.—The credit amount is—

22 “(A) \$3 per barrel of qualified crude oil  
 23 production, and

24 “(B) 50 cents per 1,000 cubic feet of  
 25 qualified natural gas production.

1           “(2) REDUCTION AS OIL AND GAS PRICES IN-  
2       CREASE.—

3           “(A) IN GENERAL.—The \$3 and 50 cents  
4       amounts under paragraph (1) shall each be re-  
5       duced (but not below zero) by an amount which  
6       bears the same ratio to such amount (deter-  
7       mined without regard to this paragraph) as—

8           “(i) the excess (if any) of the applica-  
9       ble reference price over \$15 (\$1.67 for  
10      qualified natural gas production), bears to

11          “(ii) \$3 (\$0.33 for qualified natural  
12      gas production).

13      The applicable reference price for a taxable  
14      year is the reference price of the calendar year  
15      preceding the calendar year in which the tax-  
16      able year begins.

17          “(B) INFLATION ADJUSTMENT.—In the  
18      case of any taxable year beginning in a calendar  
19      year after 2003, each of the dollar amounts  
20      contained in subparagraph (A) shall be in-  
21      creased to an amount equal to such dollar  
22      amount multiplied by the inflation adjustment  
23      factor for such calendar year (determined under  
24      section 43(b)(3)(B) by substituting ‘2002’ for  
25      ‘1990’).

1           “(C) REFERENCE PRICE.—For purposes of  
2           this paragraph, the term ‘reference price’  
3           means, with respect to any calendar year—

4                   “(i) in the case of qualified crude oil  
5                   production, the reference price determined  
6                   under section 29(d)(2)(C), and

7                   “(ii) in the case of qualified natural  
8                   gas production, the Secretary’s estimate of  
9                   the annual average wellhead price per  
10                  1,000 cubic feet for all domestic natural  
11                  gas.

12          “(c) QUALIFIED CRUDE OIL AND NATURAL GAS  
13 PRODUCTION.—For purposes of this section—

14                  “(1) IN GENERAL.—The terms ‘qualified crude  
15                  oil production’ and ‘qualified natural gas production’  
16                  mean domestic crude oil or natural gas which is pro-  
17                  duced from a qualified marginal well.

18                  “(2) LIMITATION ON AMOUNT OF PRODUCTION  
19                  WHICH MAY QUALIFY.—

20                   “(A) IN GENERAL.—Crude oil or natural  
21                   gas produced during any taxable year from any  
22                   well shall not be treated as qualified crude oil  
23                   production or qualified natural gas production  
24                   to the extent production from the well during

the taxable year exceeds 1,095 barrels or barrel equivalents.

“(B) PROPORTIONATE REDUCTIONS.—

“(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

“(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

“(3) DEFINITIONS.—

“(A) QUALIFIED MARGINAL WELL.—The term ‘qualified marginal well’ means a domestic well—

“(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

1 “(ii) which, during the taxable year—

2 “(I) has average daily production  
3 of not more than 25 barrel equiva-  
4 lents, and

5 “(II) produces water at a rate  
6 not less than 95 percent of total well  
7 effluent.

8 “(B) CRUDE OIL, ETC.—The terms ‘crude  
9 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have  
10 the meanings given such terms by section  
11 613A(e).

12 “(C) BARREL EQUIVALENT.—The term  
13 ‘barrel equivalent’ means, with respect to nat-  
14 ural gas, a conversion ratio of 6,000 cubic  
15 feet of natural gas to 1 barrel of crude oil.

16 “(d) OTHER RULES.—

17 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
18 PAYER.—In the case of a qualified marginal well in  
19 which there is more than one owner of operating in-  
20 terests in the well and the crude oil or natural gas  
21 production exceeds the limitation under subsection  
22 (c)(2), qualifying crude oil production or qualifying  
23 natural gas production attributable to the taxpayer  
24 shall be determined on the basis of the ratio which  
25 taxpayer’s revenue interest in the production bears

1 to the aggregate of the revenue interests of all oper-  
 2 ating interest owners in the production.

3 “(2) OPERATING INTEREST REQUIRED.—Any  
 4 credit under this section may be claimed only on  
 5 production which is attributable to the holder of an  
 6 operating interest.

7 “(3) PRODUCTION FROM NONCONVENTIONAL  
 8 SOURCES EXCLUDED.—In the case of production  
 9 from a qualified marginal well which is eligible for  
 10 the credit allowed under section 29 for the taxable  
 11 year, no credit shall be allowable under this section  
 12 unless the taxpayer elects not to claim the credit  
 13 under section 29 with respect to the well.

14 “(4) NONCOMPLIANCE WITH POLLUTION  
 15 LAWS.—For purposes of subsection (c)(3)(A), a  
 16 marginal well which is not in compliance with the  
 17 applicable State and Federal pollution prevention,  
 18 control, and permit requirements for any period of  
 19 time shall not be considered to be a qualified mar-  
 20 ginal well during such period.”.

21 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 22 tion 38(b), as amended by this Act, is amended by striking  
 23 “plus” at the end of paragraph (20), by striking the period  
 24 at the end of paragraph (21) and inserting “, plus”, and  
 25 by adding at the end the following new paragraph:

1           “(22) the marginal oil and gas well production  
2           credit determined under section 45K(a).”.

3           (c) NO CARRYBACK OF MARGINAL OIL AND GAS  
4 WELL PRODUCTION CREDIT BEFORE EFFECTIVE  
5 DATE.—Subsection (d) of section 39, as amended by this  
6 Act, is amended by adding at the end the following new  
7 paragraph:

8           “(19) NO CARRYBACK OF MARGINAL OIL AND  
9           GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE  
10          DATE.—No portion of the unused business credit for  
11          any taxable year which is attributable to the mar-  
12          ginal oil and gas well production credit determined  
13          under section 45K may be carried back to a taxable  
14          year ending on or before the date of the enactment  
15          of such section.”.

16          (d) COORDINATION WITH SECTION 29.—Section  
17 29(a) is amended by striking “There” and inserting “At  
18 the election of the taxpayer, there”.

19          (e) CLERICAL AMENDMENT.—The table of sections  
20 for subpart D of part IV of subchapter A of chapter 1,  
21 as amended by this Act, is amended by adding at the end  
22 the following new item:

          “Sec. 45K. Credit for producing oil and gas from marginal  
          wells.”.

1 (f) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to production in taxable years be-  
 3 ginning after the date of the enactment of this Act.

4 **SEC. 502. NATURAL GAS GATHERING LINES TREATED AS 7-**  
 5 **YEAR PROPERTY.**

6 (a) IN GENERAL.—Subparagraph (C) of section  
 7 168(e)(3) (relating to classification of certain property) is  
 8 amended by striking “and” at the end of clause (i), by  
 9 redesignating clause (ii) as clause (iii), and by inserting  
 10 after clause (i) the following new clause:

11 “(ii) any natural gas gathering line,  
 12 and”.

13 (b) NATURAL GAS GATHERING LINE.—Subsection (i)  
 14 of section 168, as amended by this Act, is amended by  
 15 adding at the end the following new paragraph:

16 “(16) NATURAL GAS GATHERING LINE.—The  
 17 term ‘natural gas gathering line’ means—

18 “(A) the pipe, equipment, and appur-  
 19 tenances determined to be a gathering line by  
 20 the Federal Energy Regulatory Commission, or

21 “(B) the pipe, equipment, and appur-  
 22 tenances used to deliver natural gas from the  
 23 wellhead or a commonpoint to the point at  
 24 which such gas first reaches—

25 “(i) a gas processing plant,



1 “(ii) an interconnection with a trans-  
 2 mission pipeline certificated by the Federal  
 3 Energy Regulatory Commission as an  
 4 interstate transmission pipeline,

5 “(iii) an interconnection with an  
 6 intrastate transmission pipeline, or

7 “(iv) a direct interconnection with a  
 8 local distribution company, a gas storage  
 9 facility, or an industrial consumer.”.

10 (c) ALTERNATIVE SYSTEM.—The table contained in  
 11 section 168(g)(3)(B) is amended by inserting after the  
 12 item relating to subparagraph (C)(i) the following new  
 13 item:

“(C)(ii) ..... 10”.

14 (d) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to property placed in service after  
 16 the date of the enactment of this Act, in taxable years  
 17 ending after such date.

18 **SEC. 503. EXPENSING OF CAPITAL COSTS INCURRED IN**  
 19 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 20 **TION AGENCY SULFUR REGULATIONS.**

21 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 22 ter 1 (relating to itemized deductions for individuals and  
 23 corporations), as amended by this Act, is amended by in-  
 24 serting after section 179C the following new section:

1 **“SEC. 179D. DEDUCTION FOR CAPITAL COSTS INCURRED IN**  
 2 **COMPLYING WITH ENVIRONMENTAL PROTEC-**  
 3 **TION AGENCY SULFUR REGULATIONS.**

4 “(a) TREATMENT AS EXPENSE.—

5 “(1) IN GENERAL.—A small business refiner  
 6 may elect to treat any qualified capital costs as an  
 7 expense which is not chargeable to capital account.  
 8 Any qualified cost which is so treated shall be al-  
 9 lowed as a deduction for the taxable year in which  
 10 the cost is paid or incurred.

11 “(2) LIMITATION.—

12 “(A) IN GENERAL.—The aggregate costs  
 13 which may be taken into account under this  
 14 subsection for any taxable year may not exceed  
 15 the applicable percentage of the qualified cap-  
 16 ital costs paid or incurred for the taxable year.

17 “(B) APPLICABLE PERCENTAGE.—For  
 18 purposes of subparagraph (A)—

19 “(i) IN GENERAL.—Except as pro-  
 20 vided in clause (ii), the applicable percent-  
 21 age is 75 percent.

22 “(ii) REDUCED PERCENTAGE.—In the  
 23 case of a small business refiner with aver-  
 24 age daily refinery runs for the period de-  
 25 scribed in subsection (b)(2) in excess of  
 26 155,000 barrels, the percentage described

1           in clause (i) shall be reduced (not below  
2           zero) by the product of such percentage  
3           (before the application of this clause) and  
4           the ratio of such excess to 50,000 barrels.

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

6           “(1) QUALIFIED CAPITAL COSTS.—The term  
7       ‘qualified capital costs’ means any costs which—

8           “(A) are otherwise chargeable to capital  
9       account, and

10          “(B) are paid or incurred for the purpose  
11       of complying with the Highway Diesel Fuel Sul-  
12       fur Control Requirement of the Environmental  
13       Protection Agency, as in effect on the date of  
14       the enactment of this section, with respect to a  
15       facility placed in service by the taxpayer before  
16       such date.

17          “(2) SMALL BUSINESS REFINER.—The term  
18       ‘small business refiner’ means, with respect to any  
19       taxable year, a refiner of crude oil, which, within the  
20       refinery operations of the business, employs not  
21       more than 1,500 employees on any day during such  
22       taxable year and whose average daily refinery run  
23       for the 1-year period ending on the date of the en-  
24       actment of this section did not exceed 205,000 bar-  
25       rels.

1       “(c) COORDINATION WITH OTHER PROVISIONS.—

2       Section 280B shall not apply to amounts which are treated  
3       as expenses under this section.

4       “(d) BASIS REDUCTION.—For purposes of this title,  
5       the basis of any property shall be reduced by the portion  
6       of the cost of such property taken into account under sub-  
7       section (a).

8       “(e) CONTROLLED GROUPS.—For purposes of this  
9       section, all persons treated as a single employer under sub-  
10      section (b), (c), (m), or (o) of section 414 shall be treated  
11      as a single employer.”.

12      (b) CONFORMING AMENDMENTS.—

13           (1) Section 263(a)(1), as amended by this Act,  
14      is amended by striking “or” at the end of subpara-  
15      graph (I), by striking the period at the end of sub-  
16      paragraph (J) and inserting “, or”, and by inserting  
17      after subparagraph (J) the following new subpara-  
18      graph:

19                   “(K) expenditures for which a deduction is  
20                   allowed under section 179D.”.

21           (2) Section 263A(c)(3) is amended by inserting  
22      “179C,” after “section”.

23           (3) Section 312(k)(3)(B), as amended by this  
24      Act, is amended by striking “or 179C” each place

1 it appears in the heading and text and inserting “,  
2 179C, or 179D”.

3 (4) Section 1016(a), as amended by this Act, is  
4 amended by striking “and” at the end of paragraph  
5 (33), by striking the period at the end of paragraph  
6 (34) and inserting “, and”, and by adding at the  
7 end the following new paragraph:

8 “(35) to the extent provided in section  
9 179D(d).”.

10 (5) Section 1245(a), as amended by this Act, is  
11 amended by inserting “179D,” after “179C,” both  
12 places it appears in paragraphs (2)(C) and (3)(C).

13 (6) The table of sections for part VI of sub-  
14 chapter B of chapter 1, as amended by this Act, is  
15 amended by inserting after section 179C the fol-  
16 lowing new item:

“Sec. 179D. Deduction for capital costs incurred in complying with Environ-  
mental Protection Agency sulfur regulations.”.

17 (c) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to expenses paid or incurred after  
19 the date of the enactment of this Act, in taxable years  
20 ending after such date.

21 **SEC. 504. ENVIRONMENTAL TAX CREDIT.**

22 (a) IN GENERAL.—Subpart D of part IV of sub-  
23 chapter A of chapter 1 (relating to business-related cred-

1 its), as amended by this Act, is amended by adding at  
2 the end the following new section:

3 **“SEC. 45L. ENVIRONMENTAL TAX CREDIT.**

4       “(a) IN GENERAL.—For purposes of section 38, the  
5 amount of the environmental tax credit determined under  
6 this section with respect to any small business refiner for  
7 any taxable year is an amount equal to 5 cents for every  
8 gallon of 15 parts per million or less sulfur diesel produced  
9 at a facility by such small business refiner during such  
10 taxable year.

11       “(b) MAXIMUM CREDIT.—

12               “(1) IN GENERAL.—For any small business re-  
13 finer, the aggregate amount determined under sub-  
14 section (a) for any taxable year with respect to any  
15 facility shall not exceed the applicable percentage of  
16 the qualified capital costs paid or incurred by such  
17 small business refiner with respect to such facility  
18 during the applicable period, reduced by the credit  
19 allowed under subsection (a) for any preceding year.

20               “(2) APPLICABLE PERCENTAGE.—For purposes  
21 of paragraph (1)—

22                       “(A) IN GENERAL.—Except as provided in  
23 subparagraph (B), the applicable percentage is  
24 25 percent.

1           “(B) REDUCED PERCENTAGE.—The per-  
2           centage described in subparagraph (A) shall be  
3           reduced in the same manner as under section  
4           179D(a)(2)(B)(ii).

5           “(c) DEFINITIONS.—For purposes of this section—

6           “(1) IN GENERAL.—The terms ‘small business  
7           refiner’ and ‘qualified capital costs’ have the same  
8           meaning as given in section 179D.

9           “(2) APPLICABLE PERIOD.—The term ‘applica-  
10          ble period’ means, with respect to any facility, the  
11          period beginning on the day after the date which is  
12          1 year after the date of the enactment of this section  
13          and ending with the date which is 1 year after the  
14          date on which the taxpayer must comply with the  
15          applicable EPA regulations with respect to such fa-  
16          cility.

17          “(3) APPLICABLE EPA REGULATIONS.—The  
18          term ‘applicable EPA regulations’ means the High-  
19          way Diesel Fuel Sulfur Control Requirements of the  
20          Environmental Protection Agency, as in effect on  
21          the date of the enactment of this section.

22          “(d) CERTIFICATION.—

23          “(1) REQUIRED.—Not later than the date  
24          which is 30 months after the first day of the first  
25          taxable year in which the environmental tax credit is

1       allowed with respect to qualified capital costs paid or  
2       incurred with respect to a facility, the small business  
3       refiner shall obtain a certification from the Sec-  
4       retary, in consultation with the Administrator of the  
5       Environmental Protection Agency, that the tax-  
6       payer's qualified capital costs with respect to such  
7       facility will result in compliance with the applicable  
8       EPA regulations.

9               “(2) CONTENTS OF APPLICATION.—An applica-  
10      tion for certification shall include relevant informa-  
11      tion regarding unit capacities and operating charac-  
12      teristics sufficient for the Secretary, in consultation  
13      with the Administrator of the Environmental Protec-  
14      tion Agency, to determine that such qualified capital  
15      costs are necessary for compliance with the applica-  
16      ble EPA regulations.

17              “(3) REVIEW PERIOD.—Any application shall  
18      be reviewed and notice of certification, if applicable,  
19      shall be made within 60 days of receipt of such ap-  
20      plication. In the event the Secretary does not notify  
21      the taxpayer of the results of such certification with-  
22      in such period, the taxpayer may presume the cer-  
23      tification to be issued until so notified.

24              “(4) STATUTE OF LIMITATIONS.—With respect  
25      to the credit allowed under this section—



1           “(A) the statutory period for the assess-  
2           ment of any deficiency attributable to such  
3           credit shall not expire before the end of the 3-  
4           year period ending on the date that the review  
5           period described in paragraph (3) ends, and

6           “(B) such deficiency may be assessed be-  
7           fore the expiration of such 3-year period not-  
8           withstanding the provisions of any other law or  
9           rule of law which would otherwise prevent such  
10          assessment.

11          “(e) CONTROLLED GROUPS.—For purposes of this  
12          section, all persons treated as a single employer under sub-  
13          section (b), (c), (m), or (o) of section 414 shall be treated  
14          as a single employer.

15          “(f) COOPERATIVE ORGANIZATIONS.—

16                 “(1) APPORTIONMENT OF CREDIT.—In the case  
17          of a cooperative organization described in section  
18          1381(a), any portion of the credit determined under  
19          subsection (a) of this section, for the taxable year  
20          may, at the election of the organization, be appor-  
21          tioned among patrons eligible to share in patronage  
22          dividends on the basis of the quantity or value of  
23          business done with or for such patrons for the tax-  
24          able year. Such an election shall be irrevocable for  
25          such taxable year.

1           “(2) TREATMENT OF ORGANIZATIONS AND PA-  
2           TRONS.—

3                   “(A) ORGANIZATIONS.—The amount of the  
4           credit not apportioned to patrons pursuant to  
5           paragraph (1) shall be included in the amount  
6           determined under subsection (a) for the taxable  
7           year of the organization.

8                   “(B) PATRONS.—The amount of the credit  
9           apportioned to patrons pursuant to paragraph  
10          (1) shall be included in the amount determined  
11          under subsection (a) for the first taxable year  
12          of each patron ending on or after the last day  
13          of the payment period (as defined in section  
14          1382(d)) for the taxable year of the organiza-  
15          tion or, if earlier, for the taxable year of each  
16          patron ending on or after the date on which the  
17          patron receives notice from the cooperative of  
18          the apportionment.”.

19          (b) CREDIT MADE PART OF GENERAL BUSINESS  
20          CREDIT.—Subsection (b) of section 38 (relating to general  
21          business credit), as amended by this Act, is amended by  
22          striking “plus” at the end of paragraph (21), by striking  
23          the period at the end of paragraph (22) and inserting “,  
24          plus”, and by adding at the end the following new para-  
25          graph:

1           “(23) in the case of a small business refiner,  
2           the environmental tax credit determined under sec-  
3           tion 45L(a).”.

4           (c) DENIAL OF DOUBLE BENEFIT.—Section 280C  
5           (relating to certain expenses for which credits are allow-  
6           able), as amended by this Act, is amended by adding after  
7           subsection (d) the following new subsection:

8           “(e) ENVIRONMENTAL TAX CREDIT.—No deduction  
9           shall be allowed for that portion of the expenses otherwise  
10          allowable as a deduction for the taxable year which is  
11          equal to the amount of the credit determined for the tax-  
12          able year under section 45L(a).”.

13          (d) CLERICAL AMENDMENT.—The table of sections  
14          for subpart D of part IV of subchapter A of chapter 1,  
15          as amended by this Act, is amended by adding at the end  
16          the following new item:

                  “Sec. 45L. Environmental tax credit.”.

17          (e) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to expenses paid or incurred after  
19          the date of the enactment of this Act, in taxable years  
20          ending after such date.

21       **SEC. 505. DETERMINATION OF SMALL REFINER EXCEPTION**  
22                               **TO OIL DEPLETION DEDUCTION.**

23          (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
24          (relating to certain refiners excluded) is amended to read  
25          as follows:

1           “(4) CERTAIN REFINERS EXCLUDED.—If the  
 2           taxpayer or 1 or more related persons engages in the  
 3           refining of crude oil, subsection (c) shall not apply  
 4           to the taxpayer for a taxable year if the average  
 5           daily refinery runs of the taxpayer and such persons  
 6           for the taxable year exceed 60,000 barrels. For pur-  
 7           poses of this paragraph, the average daily refinery  
 8           runs for any taxable year shall be determined by di-  
 9           viding the aggregate refinery runs for the taxable  
 10          year by the number of days in the taxable year.”.

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

14   **SEC. 506. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**  
 15                                   **SION.**

16          Section 613A(c)(6)(H) (relating to temporary sus-  
 17          pension of taxable income limit with respect to marginal  
 18          production) is amended by striking “2004” and inserting  
 19          “2007”.

20   **SEC. 507. AMORTIZATION OF GEOLOGICAL AND GEO-**  
 21                                   **PHYSICAL EXPENDITURES.**

22          (a) IN GENERAL.—Part VI of subchapter B of chap-  
 23          ter 1, as amended by this Act, is amended by adding at  
 24          the end the following new section:

1 **“SEC. 199. AMORTIZATION OF GEOLOGICAL AND GEO-**  
 2 **PHYSICAL EXPENDITURES FOR DOMESTIC**  
 3 **OIL AND GAS WELLS.**

4 “A taxpayer shall be entitled to an amortization de-  
 5 duction with respect to any geological and geophysical ex-  
 6 penses incurred in connection with the exploration for, or  
 7 development of, oil or gas within the United States (as  
 8 defined in section 638) based on a period of 24 months  
 9 beginning with the month in which such expenses were in-  
 10 curred.”.

11 (b) CLERICAL AMENDMENT.—The table of sections  
 12 for part VI of subchapter B of chapter 1, as amended by  
 13 this Act, is amended by adding at the end the following  
 14 new item:

“Sec. 199. Amortization of geological and geophysical expenditures for domestic  
 oil and gas wells.”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to costs paid or incurred in taxable  
 17 years beginning after the date of the enactment of this  
 18 Act.

19 **SEC. 508. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

20 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 21 ter 1, as amended by this Act, is amended by adding at  
 22 the end the following new section:

1   **“SEC. 199A. AMORTIZATION OF DELAY RENTAL PAYMENTS**  
 2                   **FOR DOMESTIC OIL AND GAS WELLS.**

3           “(a) IN GENERAL.—A taxpayer shall be entitled to  
 4 an amortization deduction with respect to any delay rental  
 5 payments incurred in connection with the development of  
 6 oil or gas within the United States (as defined in section  
 7 638) based on a period of 24 months beginning with the  
 8 month in which such payments were incurred.”.

9           “(b) DELAY RENTAL PAYMENTS.—For purposes of  
 10 this section, the term ‘delay rental payment’ means an  
 11 amount paid for the privilege of deferring development of  
 12 an oil or gas well under an oil or gas lease.”.

13          (b) CLERICAL AMENDMENT.—The table of sections  
 14 for part VI of subchapter B of chapter 1, as amended by  
 15 this Act, is amended by adding at the end the following  
 16 new item:

“Sec. 199A. Amortization of delay rental payments for domestic oil and gas  
 wells.”.

17          (c) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to amounts paid or incurred in tax-  
 19 able years beginning after the date of the enactment of  
 20 this Act.

21   **SEC. 509. STUDY OF COAL BED METHANE.**

22          (a) IN GENERAL.—The Secretary of the Treasury  
 23 shall study the effect of section 29 of the Internal Revenue  
 24 Code of 1986 on the production of coal bed methane.

1 (b) CONTENTS OF STUDY.—The study under sub-  
 2 section (a) shall estimate the total amount of credits under  
 3 section 29 of the Internal Revenue Code of 1986 claimed  
 4 annually and in the aggregate which are related to the  
 5 production of coal bed methane since the date of the enact-  
 6 ment of such section 29. Such study shall report the an-  
 7 nual value of such credits allowable for coal bed methane  
 8 compared to the average annual wellhead price of natural  
 9 gas (per thousand cubic feet of natural gas). Such study  
 10 shall also estimate the incremental increase in production  
 11 of coal bed methane that has resulted from the enactment  
 12 of such section 29, and the cost to the Federal Govern-  
 13 ment, in terms of the net tax benefits claimed, per thou-  
 14 sand cubic feet of incremental coal bed methane produced  
 15 annually and in the aggregate since such enactment.

16 **SEC. 510. EXTENSION AND MODIFICATION OF CREDIT FOR**  
 17 **PRODUCING FUEL FROM A NONCONVEN-**  
 18 **TIONAL SOURCE.**

19 (a) IN GENERAL.—Section 29 is amended by adding  
 20 at the end the following new subsection:

21 “(h) EXTENSION FOR OTHER FACILITIES.—

22 “(1) OIL AND GAS.—In the case of a well or fa-  
 23 cility for producing qualified fuels described in sub-  
 24 paragraph (A) or (B) of subsection (c)(1) which was  
 25 drilled or placed in service after the date of the en-

1 actment of this subsection and before January 1,  
2 2005, notwithstanding subsection (f), this section  
3 shall apply with respect to such fuels produced at  
4 such well or facility not later than the close of the  
5 3-year period beginning on the date that such well  
6 is drilled or such facility is placed in service.

7 “(2) FACILITIES PRODUCING REFINED COAL.—

8 “(A) IN GENERAL.—In the case of a facil-  
9 ity described in subparagraph (C) for producing  
10 refined coal which was placed in service after  
11 the date of the enactment of this subsection  
12 and before January 1, 2007, this section shall  
13 apply with respect to fuel produced at such fa-  
14 cility not later than the close of the 5-year pe-  
15 riod beginning on the date such facility is  
16 placed in service.

17 “(B) REFINED COAL.—For purposes of  
18 this paragraph, the term ‘refined coal’ means a  
19 fuel which is a liquid, gaseous, or solid syn-  
20 thetic fuel produced from coal (including lig-  
21 nite) or high carbon fly ash, including such fuel  
22 used as a feedstock.

23 “(C) COVERED FACILITIES.—

24 “(i) IN GENERAL.—A facility is de-  
25 scribed in this subparagraph if such facil-



1           ity produces refined coal using a tech-  
2           nology that results in—

3                   “(I) a qualified emission reduc-  
4                   tion, and

5                   “(II) a qualified enhanced value.

6                   “(ii) QUALIFIED EMISSION REDUC-  
7                   TION.—For purposes of this subparagraph,  
8                   the term ‘qualified emission reduction’  
9                   means a reduction of at least 20 percent of  
10                  the emissions of nitrogen oxide and either  
11                  sulfur dioxide or mercury released when  
12                  burning the refined coal (excluding any di-  
13                  lution caused by materials combined or  
14                  added during the production process), as  
15                  compared to the emissions released when  
16                  burning the feedstock coal or comparable  
17                  coal predominantly available in the market-  
18                  place as of January 1, 2003.

19                  “(iii) QUALIFIED ENHANCED  
20                  VALUE.—For purposes of this subpara-  
21                  graph, the term ‘qualified enhanced value’  
22                  means an increase of at least 50 percent in  
23                  the market value of the refined coal (ex-  
24                  cluding any increase caused by materials  
25                  combined or added during the production

process), as compared to the value of the feedstock coal.

“(iii) QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY FACILITIES EXCLUDED.—A facility described in this subparagraph shall not include a qualifying advanced clean coal technology facility (as defined in section 48A(b)).

“(3) WELLS PRODUCING VISCOUS OIL.—

“(A) IN GENERAL.—In the case of a well for producing viscous oil which was placed in service after the date of the enactment of this subsection and before January 1, 2005, this section shall apply with respect to fuel produced at such well not later than the close of the 3-year period beginning on the date such well is placed in service.

“(B) VISCOUS OIL.—The term ‘viscous oil’ means heavy oil, as defined in section 613A(c)(6), except that—

“(i) ‘22 degrees’ shall be substituted for ‘20 degrees’ in applying subparagraph (F) thereof, and

“(ii) in all cases, the oil gravity shall be measured from the initial well-head

1 samples, drill cuttings, or down hole sam-  
 2 ples.

3 “(C) WAIVER OF UNRELATED PERSON RE-  
 4 QUIREMENT.—In the case of viscous oil, the re-  
 5 quirement under subsection (a)(1)(B)(i) of a  
 6 sale to an unrelated person shall not apply to  
 7 any sale to the extent that the viscous oil is not  
 8 consumed in the immediate vicinity of the well-  
 9 head.

10 “(4) COALMINE METHANE GAS.—

11 “(A) IN GENERAL.—This section shall  
 12 apply to coalmine methane gas—

13 “(i) captured or extracted by the tax-  
 14 payer after the date of the enactment of  
 15 this subsection and before January 1,  
 16 2005, and

17 “(ii) utilized as a fuel source or sold  
 18 by or on behalf of the taxpayer to an unre-  
 19 lated person after the date of the enact-  
 20 ment of this subsection and before January  
 21 1, 2005.

22 “(B) COALMINE METHANE GAS.—For pur-  
 23 poses of this paragraph, the term ‘coalmine  
 24 methane gas’ means any methane gas which  
 25 is—

1 “(i) liberated during qualified coal  
2 mining operations, or

3 “(ii) extracted up to 5 years in ad-  
4 vance of qualified coal mining operations  
5 as part of a specific plan to mine a coal  
6 deposit.

7 “(C) SPECIAL RULE FOR ADVANCED EX-  
8 TRACTION.—In the case of coalmine methane  
9 gas which is captured in advance of qualified  
10 coal mining operations, the credit under sub-  
11 section (a) shall be allowed only after the date  
12 the coal extraction occurs in the immediate area  
13 where the coalmine methane gas was removed.

14 “(D) NONCOMPLIANCE WITH POLLUTION  
15 LAWS.—For purposes of subparagraphs (B)  
16 and (C), coal mining operations which are not  
17 in compliance with the applicable State and  
18 Federal pollution prevention, control, and per-  
19 mit requirements for any period of time shall  
20 not be considered to be qualified coal mining  
21 operations during such period.

22 “(5) FACILITIES PRODUCING FUELS FROM AG-  
23 RICULTURAL AND ANIMAL WASTE.—

24 “(A) IN GENERAL.—In the case of facility  
25 for producing liquid, gaseous, or solid fuels

1 from qualified agricultural and animal wastes,  
2 including such fuels when used as feedstocks,  
3 which was placed in service after the date of the  
4 enactment of this subsection and before Janu-  
5 ary 1, 2005, this section shall apply with re-  
6 spect to fuel produced at such facility not later  
7 than the close of the 3-year period beginning on  
8 the date such facility is placed in service.

9 “(B) QUALIFIED AGRICULTURAL AND ANI-  
10 MAL WASTE.—For purposes of this paragraph,  
11 the term ‘qualified agricultural and animal  
12 waste’ means agriculture and animal waste, in-  
13 cluding by-products, packaging, and any mate-  
14 rials associated with the processing, feeding,  
15 selling, transporting, or disposal of agricultural  
16 or animal products or wastes, including wood  
17 shavings, straw, rice hulls, and other bedding  
18 for the disposition of manure.

19 “(6) CREDIT AMOUNT.—In determining the  
20 amount of credit allowable under this section solely  
21 by reason of this subsection, the dollar amount ap-  
22 plicable under subsection (a)(1) shall be \$3 (without  
23 regard to subsection (b)(2)).”.

24 (b) EXTENSION FOR CERTAIN FUEL PRODUCED  
25 AT EXISTING FACILITIES.—Paragraph (2) of section

1       29(f) (relating to application of section) is amended  
 2       by inserting “(January 1, 2005, in the case of any  
 3       coke, coke gas, or natural gas and byproducts pro-  
 4       duced by coal gasification from lignite in a facility  
 5       described in paragraph (1)(B))” after “January 1,  
 6       2003”.

7       (c) EFFECTIVE DATE.—The amendment made by  
 8       this section shall apply to fuel sold after the date of the  
 9       enactment of this Act, in taxable years ending after such  
 10      date.

11      **SEC. 511. NATURAL GAS DISTRIBUTION LINES TREATED AS**  
 12                                   **15-YEAR PROPERTY.**

13       (a) IN GENERAL.—Subparagraph (E) of section  
 14      168(e)(3) (relating to classification of certain property) is  
 15      amended by striking “and” at the end of clause (ii), by  
 16      striking the period at the end of clause (iii) and by insert-  
 17      ing “, and”, and by adding at the end the following new  
 18      clause:

19                                   “(iv) any natural gas distribution  
 20                                   line.”.

21       (b) ALTERNATIVE SYSTEM.—The table contained in  
 22      section 168(g)(3)(B), as amended by this Act, is amended  
 23      by adding after the item relating to subparagraph (E)(iii)  
 24      the following new item:

“(E)(iv) ..... 20”.

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

## 5 **TITLE VI—ELECTRIC UTILITY** 6 **RESTRUCTURING PROVISIONS**

### 7 **SEC. 601. ONGOING STUDY AND REPORTS REGARDING TAX** 8 **ISSUES RESULTING FROM FUTURE RESTRUC-** 9 **TURING DECISIONS.**

10 (a) ONGOING STUDY.—The Secretary of the Treas-  
11 ury, after consultation with the Federal Energy Regu-  
12 latory Commission, shall undertake an ongoing study of  
13 Federal tax issues resulting from nontax decisions on the  
14 restructuring of the electric industry. In particular, the  
15 study shall focus on the effect on tax-exempt bonding au-  
16 thority of public power entities and on corporate restruc-  
17 turing which results from the restructuring of the electric  
18 industry.

19 (b) REGULATORY RELIEF.—In connection with the  
20 study described in subsection (a), the Secretary of the  
21 Treasury should exercise the Secretary's authority, as ap-  
22 propriate, to modify or suspend regulations that may im-  
23 pede an electric utility company's ability to reorganize its  
24 capital stock structure to respond to a competitive market-  
25 place.

1       (c) REPORTS.—The Secretary of the Treasury shall  
 2 report to the Committee on Finance of the Senate and  
 3 the Committee on Ways and Means of the House of Rep-  
 4 resentatives not later than December 31, 2003, regarding  
 5 Federal tax issues identified under the study described in  
 6 subsection (a), and at least annually thereafter, regarding  
 7 such issues identified since the preceding report. Such re-  
 8 ports shall also include such legislative recommendations  
 9 regarding changes to the private business use rules under  
 10 subpart A of part IV of subchapter B of chapter 1 of the  
 11 Internal Revenue Code of 1986 as the Secretary of the  
 12 Treasury deems necessary. The reports shall continue  
 13 until such time as the Federal Energy Regulatory Com-  
 14 mission has completed the restructuring of the electric in-  
 15 dustry.

16 **SEC. 602. MODIFICATIONS TO SPECIAL RULES FOR NU-**  
 17 **CLEAR DECOMMISSIONING COSTS.**

18       (a) REPEAL OF LIMITATION ON DEPOSITS INTO  
 19 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS  
 20 AFTER FUNDING PERIOD.—Subsection (b) of section  
 21 468A is amended to read as follows:

22       “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—  
 23 The amount which a taxpayer may pay into the Fund for  
 24 any taxable year shall not exceed the ruling amount appli-  
 25 cable to such taxable year.”.



1 (b) CLARIFICATION OF TREATMENT OF FUND  
 2 TRANSFERS.—Subsection (e) of section 468A is amended  
 3 by adding at the end the following new paragraph:

4 “(8) TREATMENT OF FUND TRANSFERS.—If, in  
 5 connection with the transfer of the taxpayer’s inter-  
 6 est in a nuclear power plant, the taxpayer transfers  
 7 the Fund with respect to such power plant to the  
 8 transferee of such interest and the transferee elects  
 9 to continue the application of this section to such  
 10 Fund—

11 “(A) the transfer of such Fund shall not  
 12 cause such Fund to be disqualified from the ap-  
 13 plication of this section, and

14 “(B) no amount shall be treated as distrib-  
 15 uted from such Fund, or be includible in gross  
 16 income, by reason of such transfer.”.

17 (c) DEDUCTION FOR NUCLEAR DECOMMISSIONING  
 18 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)  
 19 is amended to read as follows:

20 “(2) DEDUCTION OF NUCLEAR DECOMMIS-  
 21 SIONING COSTS.—In addition to any deduction under  
 22 subsection (a), nuclear decommissioning costs paid  
 23 or incurred by the taxpayer during any taxable year  
 24 shall constitute ordinary and necessary expenses in  
 25 carrying on a trade or business under section 162.”.

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

4 **SEC. 603. TREATMENT OF CERTAIN INCOME OF COOPERA-**  
 5 **TIVES.**

6 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-  
 7 COMMISSIONING TRANSACTIONS.—

8 (1) IN GENERAL.—Subparagraph (C) of section  
 9 501(c)(12) is amended by striking “or” at the end  
 10 of clause (i), by striking clause (ii), and by adding  
 11 at the end the following new clauses:

12 “(ii) from any open access transaction  
 13 (other than income received or accrued di-  
 14 rectly or indirectly from a member),

15 “(iii) from any nuclear decommis-  
 16 sioning transaction,

17 “(iv) from any asset exchange or con-  
 18 version transaction, or

19 “(v) from the prepayment of any loan,  
 20 debt, or obligation made, insured, or guar-  
 21 anteed under the Rural Electrification Act  
 22 of 1936.”.

23 (2) DEFINITIONS AND SPECIAL RULES.—Para-  
 24 graph (12) of section 501(c) is amended by adding  
 25 at the end the following new subparagraphs:

1           “(E) For purposes of subparagraph  
2           (C)(ii)—

3           “(i) The term ‘open access trans-  
4           action’ means any transaction meeting the  
5           open access requirements of any of the fol-  
6           lowing subclauses with respect to a mutual  
7           or cooperative electric company:

8           “(I) The provision or sale of  
9           transmission service or ancillary serv-  
10          ices meets the open access require-  
11          ments of this subclause only if such  
12          services are provided on a nondiscrim-  
13          inatory open access basis pursuant to  
14          an open access transmission tariff  
15          filed with and approved by FERC, in-  
16          cluding an acceptable reciprocity tar-  
17          iff, or under a regional transmission  
18          organization agreement approved by  
19          FERC.

20          “(II) The provision or sale of  
21          electric energy distribution services or  
22          ancillary services meets the open ac-  
23          cess requirements of this subclause  
24          only if such services are provided on a  
25          nondiscriminatory open access basis to

1 end-users served by distribution facili-  
2 ties owned by the mutual or coopera-  
3 tive electric company (or its mem-  
4 bers).

5 “(III) The delivery or sale of  
6 electric energy generated by a genera-  
7 tion facility meets the open access re-  
8 quirements of this subclause only if  
9 such facility is directly connected to  
10 distribution facilities owned by the  
11 mutual or cooperative electric com-  
12 pany (or its members) which owns the  
13 generation facility, and such distribu-  
14 tion facilities meet the open access re-  
15 quirements of subclause (II).

16 “(ii) Clause (i)(I) shall apply in the  
17 case of a voluntarily filed tariff only if the  
18 mutual or cooperative electric company  
19 files a report with FERC within 90 days  
20 after the date of the enactment of this sub-  
21 paragraph relating to whether or not such  
22 company will join a regional transmission  
23 organization.

24 “(iii) A mutual or cooperative electric  
25 company shall be treated as meeting the

1 open access requirements of clause (i)(I) if  
2 a regional transmission organization con-  
3 trols the transmission facilities.

4 “(iv) References to FERC in this sub-  
5 paragraph shall be treated as including  
6 references to the Public Utility Commis-  
7 sion of Texas with respect to any ERCOT  
8 utility (as defined in section 212(k)(2)(B)  
9 of the Federal Power Act (16 U.S.C.  
10 824k(k)(2)(B))) or references to the Rural  
11 Utilities Service with respect to any other  
12 facility not subject to FERC jurisdiction.

13 “(v) For purposes of this subpara-  
14 graph—

15 “(I) The term ‘transmission facil-  
16 ity’ means an electric output facility  
17 (other than a generation facility) that  
18 operates at an electric voltage of 69  
19 kV or greater. To the extent provided  
20 in regulations, such term includes any  
21 output facility that FERC determines  
22 is a transmission facility under stand-  
23 ards applied by FERC under the Fed-  
24 eral Power Act (as in effect on the

1 date of the enactment of the Energy  
2 Tax Incentives Act of 2003).

3 “(II) The term ‘regional trans-  
4 mission organization’ includes an  
5 independent system operator.

6 “(III) The term ‘FERC’ means  
7 the Federal Energy Regulatory Com-  
8 mission.

9 “(F) The term ‘nuclear decommissioning  
10 transaction’ means—

11 “(i) any transfer into a trust, fund, or  
12 instrument established to pay any nuclear  
13 decommissioning costs if the transfer is in  
14 connection with the transfer of the mutual  
15 or cooperative electric company’s interest  
16 in a nuclear power plant or nuclear power  
17 plant unit,

18 “(ii) any distribution from any trust,  
19 fund, or instrument established to pay any  
20 nuclear decommissioning costs, or

21 “(iii) any earnings from any trust,  
22 fund, or instrument established to pay any  
23 nuclear decommissioning costs.

24 “(G) The term ‘asset exchange or conver-  
25 sion transaction’ means any voluntary exchange

or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

“(i) generating, transmitting, distributing, or selling electric energy, or

“(ii) producing, transmitting, distributing, or selling natural gas.”.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

“(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

1           “(ii) For purposes of clause (i), the term  
2           ‘load loss transaction’ means any wholesale or  
3           retail sale of electric energy (other than to  
4           members) to the extent that the aggregate sales  
5           during the recovery period does not exceed the  
6           load loss mitigation sales limit for such period.

7           “(iii) For purposes of clause (ii), the load  
8           loss mitigation sales limit for the recovery pe-  
9           riod is the sum of the annual load losses for  
10          each year of such period.

11          “(iv) For purposes of clause (iii), a mutual  
12          or cooperative electric company’s annual load  
13          loss for each year of the recovery period is the  
14          amount (if any) by which—

15               “(I) the megawatt hours of electric  
16               energy sold during such year to members  
17               of such electric company are less than

18               “(II) the megawatt hours of electric  
19               energy sold during the base year to such  
20               members.

21          “(v) For purposes of clause (iv)(II), the  
22          term ‘base year’ means—

23               “(I) the calendar year preceding the  
24               start-up year, or



1                   “(II) at the election of the electric  
2                   company, the second or third calendar  
3                   years preceding the start-up year.

4                   “(vi) For purposes of this subparagraph,  
5                   the recovery period is the 7-year period begin-  
6                   ning with the start-up year.

7                   “(vii) For purposes of this subparagraph,  
8                   the start-up year is the calendar year which in-  
9                   cludes the date of the enactment of this sub-  
10                  paragraph or, if later, at the election of the mu-  
11                  tual or cooperative electric company—

12                  “(I) the first year that such electric  
13                  company offers nondiscriminatory open ac-  
14                  cess, or

15                  “(II) the first year in which at least  
16                  10 percent of such electric company’s sales  
17                  are not to members of such electric com-  
18                  pany.

19                  “(viii) A company shall not fail to be treat-  
20                  ed as a mutual or cooperative company for pur-  
21                  poses of this paragraph or as a corporation op-  
22                  erating on a cooperative basis for purposes of  
23                  section 1381(a)(2)(C) by reason of the treat-  
24                  ment under clause (i).

1           “(ix) In the case of a mutual or coopera-  
 2           tive electric company, income from any open ac-  
 3           cess transaction received, or accrued, indirectly  
 4           from a member shall be treated as an amount  
 5           collected from members for the sole purpose of  
 6           meeting losses and expenses.”.

7           (c) EXCEPTION FROM UNRELATED BUSINESS TAX-  
 8           ABLE INCOME.—Subsection (b) of section 512 (relating to  
 9           modifications) is amended by adding at the end the fol-  
 10          lowing new paragraph:

11           “(18) TREATMENT OF MUTUAL OR COOPERA-  
 12           TIVE ELECTRIC COMPANIES.—In the case of a mu-  
 13           tual or cooperative electric company described in sec-  
 14           tion 501(c)(12), there shall be excluded income  
 15           which is treated as member income under subpara-  
 16           graph (H) thereof.”.

17           (d) CROSS REFERENCE.—Section 1381 is amended  
 18          by adding at the end the following new subsection:

19           “(c) CROSS REFERENCE.—

**“For treatment of income from load loss trans-  
 actions of organizations described in subsection  
 (a)(2)(C), see section 501(c)(12)(H).”.**

20           (e) EFFECTIVE DATE.—The amendments made by  
 21          this section shall apply to taxable years beginning after  
 22          the date of the enactment of this Act.

1 **SEC. 604. SALES OR DISPOSITIONS TO IMPLEMENT FED-**  
 2 **ERAL ENERGY REGULATORY COMMISSION**  
 3 **OR STATE ELECTRIC RESTRUCTURING POL-**  
 4 **ICY.**

5 (a) IN GENERAL.—Section 451 (relating to general  
 6 rule for taxable year of inclusion) is amended by adding  
 7 at the end the following new subsection:

8 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO  
 9 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-  
 10 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

11 “(1) IN GENERAL.—For purposes of this sub-  
 12 title, if a taxpayer elects the application of this sub-  
 13 section to a qualifying electric transmission trans-  
 14 action in any taxable year—

15 “(A) any ordinary income derived from  
 16 such transaction which would be required to be  
 17 recognized under section 1245 or 1250 for such  
 18 taxable year (determined without regard to this  
 19 subsection), and

20 “(B) any income derived from such trans-  
 21 action in excess of such ordinary income which  
 22 is required to be included in gross income for  
 23 such taxable year,

24 shall be so recognized and included ratably over the  
 25 8-taxable year period beginning with such taxable  
 26 year.

1           “(2) QUALIFYING ELECTRIC TRANSMISSION  
2           TRANSACTION.—For purposes of this subsection, the  
3           term ‘qualifying electric transmission transaction’  
4           means any sale or other disposition before January  
5           1, 2007, of—

6                   “(A) property used by the taxpayer in the  
7                   trade or business of providing electric trans-  
8                   mission services, or

9                   “(B) any stock or partnership interest in a  
10                  corporation or partnership, as the case may be,  
11                  whose principal trade or business consists of  
12                  providing electric transmission services,

13               but only if such sale or disposition is to an inde-  
14               pendent transmission company.

15           “(3) INDEPENDENT TRANSMISSION COM-  
16           PANY.—For purposes of this subsection, the term  
17           ‘independent transmission company’ means—

18                   “(A) a regional transmission organization  
19                   approved by the Federal Energy Regulatory  
20                   Commission,

21                   “(B) a person—

22                           “(i) who the Federal Energy Regu-  
23                           latory Commission determines in its au-  
24                           thorization of the transaction under section  
25                           203 of the Federal Power Act (16 U.S.C.

1           824b) is not a market participant within  
2           the meaning of such Commission's rules  
3           applicable to regional transmission organi-  
4           zations, and

5           “(ii) whose transmission facilities to  
6           which the election under this subsection  
7           applies are under the operational control of  
8           a Federal Energy Regulatory Commission-  
9           approved regional transmission organiza-  
10          tion before the close of the period specified  
11          in such authorization, but not later than  
12          the close of the period applicable under  
13          paragraph (1), or

14          “(C) in the case of facilities subject to the  
15          exclusive jurisdiction of the Public Utility Com-  
16          mission of Texas, a person which is approved by  
17          that Commission as consistent with Texas State  
18          law regarding an independent transmission or-  
19          ganization.

20          “(4) ELECTION.—An election under paragraph  
21          (1), once made, shall be irrevocable.

22          “(5) NONAPPLICATION OF INSTALLMENT SALES  
23          TREATMENT.—Section 453 shall not apply to any  
24          qualifying electric transmission transaction with re-

1       spect to which an election to apply this subsection  
2       is made.”.

3       (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to transactions occurring after the  
5 date of the enactment of this Act.

6       **SEC. 605. TREATMENT OF CERTAIN DEVELOPMENT INCOME**  
7                               **OF COOPERATIVES.**

8       (a) **IN GENERAL.**—Subparagraph (C) of section  
9 501(c)(12), as amended by this Act, is amended by strik-  
10 ing “or” at the end of clause (iv), by striking the period  
11 at the end of clause (v) and insert “, or”, and by adding  
12 at the end the following new clause:

13                               “(vi) from the receipt before January  
14                               1, 2007, of any money, property, capital,  
15                               or any other contribution in aid of con-  
16                               struction or connection charge intended to  
17                               facilitate the provision of electric service  
18                               for the purpose of developing qualified  
19                               fuels from nonconventional sources (within  
20                               the meaning of section 29).”.

21       (b) **EFFECTIVE DATE.**—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 the date of the enactment of this Act.

## **TITLE VII—ADDITIONAL PROVISIONS**

### **SEC. 701. EXTENSION OF ACCELERATED DEPRECIATION AND WAGE CREDIT BENEFITS ON INDIAN RESERVATIONS.**

(a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON INDIAN RESERVATIONS.—Section 168(j)(8) (relating to termination), as amended by section 613(b) of the Job Creation and Worker Assistance Act of 2002, is amended by striking “2004” and inserting “2005”.

(b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f) (relating to termination), as amended by section 613(a) of the Job Creation and Worker Assistance Act of 2002, is amended by striking “2004” and inserting “2005”.

### **SEC. 702. STUDY OF EFFECTIVENESS OF CERTAIN PROVISIONS BY GAO.**

(a) STUDY.—The Comptroller General of the United States shall undertake an ongoing analysis of—

(1) the effectiveness of the alternative motor vehicles and fuel incentives provisions under title II and the conservation and energy efficiency provisions under title III, and

(2) the recipients of the tax benefits contained in such provisions, including an identification of

1       such recipients by income and other appropriate  
2       measurements.

3       Such analysis shall quantify the effectiveness of such pro-  
4       visions by examining and comparing the Federal Govern-  
5       ment's forgone revenue to the aggregate amount of energy  
6       actually conserved and tangible environmental benefits  
7       gained as a result of such provisions.

8       (b) REPORTS.—The Comptroller General of the  
9       United States shall report the analysis required under sub-  
10      section (a) to Congress not later than December 31, 2003,  
11      and annually thereafter.

12      **SEC. 703. CREDIT FOR PRODUCTION OF ALASKA NATURAL**  
13                                      **GAS.**

14      (a) IN GENERAL.—Subpart D of part IV of sub-  
15      chapter A of chapter 1 (relating to business related cred-  
16      its), as amended by this Act, is amended by adding at  
17      the end the following new section:

18      **“SEC. 45M. ALASKA NATURAL GAS.**

19           “(a) IN GENERAL.—For purposes of section 38, the  
20      Alaska natural gas credit of any taxpayer for any taxable  
21      year is the credit amount per 1,000,000 Btu of Alaska  
22      natural gas entering any intake or tie-in point which was  
23      derived from an area of the State of Alaska lying north  
24      of 64 degrees North latitude, which is attributable to the  
25      taxpayer and sold by or on behalf of the taxpayer to an



1 unrelated person during such taxable year (within the  
2 meaning of section 45).

3 “(b) CREDIT AMOUNT.—For purposes of this sec-  
4 tion—

5 “(1) IN GENERAL.—The credit amount per  
6 1,000,000 Btu of Alaska natural gas entering any  
7 intake or tie-in point which was derived from an  
8 area of the State of Alaska lying north of 64 degrees  
9 North latitude (determined in United States dol-  
10 lars), is the excess of—

11 “(A) \$3.25, over

12 “(B) the average monthly price at the  
13 AECO C Hub in Alberta, Canada, for Alaska  
14 natural gas for the month in which occurs the  
15 date of such entering.

16 “(2) INFLATION ADJUSTMENT.—In the case of  
17 any taxable year beginning in a calendar year after  
18 the first calendar year ending after the date de-  
19 scribed in subsection (g)(1), the dollar amount con-  
20 tained in paragraph (1)(A) shall be increased to an  
21 amount equal to such dollar amount multiplied by  
22 the inflation adjustment factor for such calendar  
23 year (determined under section 43(b)(3)(B) by sub-  
24 stituting ‘the calendar year ending before the date  
25 described in section 45M(g)(1)’ for ‘1990’).

1       “(c) ALASKA NATURAL GAS.—For purposes of this  
2 section, the term ‘Alaska natural gas’ means natural gas  
3 entering any intake or tie-in point which was derived from  
4 an area of the State of Alaska lying north of 64 degrees  
5 North latitude produced in compliance with the applicable  
6 State and Federal pollution prevention, control, and per-  
7 mit requirements from the area generally known as the  
8 North Slope of Alaska (including the continental shelf  
9 thereof within the meaning of section 638(l)), determined  
10 without regard to the area of the Alaska National Wildlife  
11 Refuge (including the continental shelf thereof within the  
12 meaning of section 638(l)).

13       “(d) RECAPTURE.—

14               “(1) IN GENERAL.—With respect to each  
15 1,000,000 Btu of Alaska natural gas entering any  
16 intake or tie-in point which was derived from an  
17 area of the State of Alaska lying north of 64 degrees  
18 North latitude after the date which is 3 years after  
19 the date described in subsection (g)(1), if the aver-  
20 age monthly price described in subsection (b)(1)(B)  
21 exceeds 150 percent of the amount described in sub-  
22 section (b)(1)(A) for the month in which occurs the  
23 date of such entering, the taxpayer’s tax under this  
24 chapter for the taxable year shall be increased by an  
25 amount equal to the lesser of—

1           “(A) such excess, or

2           “(B) the aggregate decrease in the credits  
3           allowed under section 38 for all prior taxable  
4           years which would have resulted if the Alaska  
5           natural gas credit received by the taxpayer for  
6           such years had been zero.

7           “(2) SPECIAL RULES.—

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

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

22          “(e) APPLICATION OF RULES.—For purposes of this  
23          section, rules similar to the rules of paragraphs (3), (4),  
24          and (5) of section 45(d) shall apply.

1       “(f) NO DOUBLE BENEFIT.—The amount of any de-  
 2       duction or other credit allowable under this chapter for  
 3       any fuel taken into account in computing the amount of  
 4       the credit determined under subsection (a) shall be re-  
 5       duced by the amount of such credit attributable to such  
 6       fuel.

7       “(g) APPLICATION OF SECTION.—This section shall  
 8       apply to Alaska natural gas entering any intake or tie-  
 9       in point which was derived from an area of the State of  
 10      Alaska lying north of 64 degrees North latitude for the  
 11      period—

12               “(1) beginning with the later of—

13                       “(A) January 1, 2010, or

14                       “(B) the initial date for the interstate  
 15              transportation of such Alaska natural gas, and

16               “(2) except with respect to subsection (d), end-  
 17              ing with the date which is 15 years after the date  
 18              described in paragraph (1).”.

19      (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 20      tion 38(b), as amended by this Act, is amended by striking  
 21      “plus” at the end of paragraph (22), by striking the period  
 22      at the end of paragraph (23) and inserting “, plus”, and  
 23      by adding at the end the following new paragraph:

24               “(24) The Alaska natural gas credit determined  
 25              under section 45M(a).”.

1       (c) ALLOWING CREDIT AGAINST ENTIRE REGULAR  
2 TAX AND MINIMUM TAX.—

3           (1) IN GENERAL.—Subsection (c) of section 38  
4       (relating to limitation based on amount of tax), as  
5       amended by this Act, is amended by redesignating  
6       paragraph (5) as paragraph (6) and by inserting  
7       after paragraph (4) the following new paragraph:

8           “(5) SPECIAL RULES FOR ALASKA NATURAL  
9       GAS CREDIT.—

10           “(A) IN GENERAL.—In the case of the  
11       Alaska natural gas credit—

12           “(i) this section and section 39 shall  
13       be applied separately with respect to the  
14       credit, and

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

17           “(I) the amounts in subpara-  
18       graphs (A) and (B) thereof shall be  
19       treated as being zero, and

20           “(II) the limitation under para-  
21       graph (1) (as modified by subclause  
22       (I)) shall be reduced by the credit al-  
23       lowed under subsection (a) for the  
24       taxable year (other than the Alaska  
25       natural gas credit).

1 “(B) ALASKA NATURAL GAS CREDIT.—

2 For purposes of this subsection, the term ‘Alas-  
3 ka natural gas credit’ means the credit allow-  
4 able under subsection (a) by reason of section  
5 45M(a).”.

6 (2) CONFORMING AMENDMENTS.—Subclause  
7 (II) of section 38(c)(2)(A)(ii), as amended by this  
8 Act, subclause (II) of section 38(c)(3)(A)(ii), as  
9 amended by this Act, and subclause (II) of section  
10 38(c)(4)(A)(ii), as added by this Act, are each  
11 amended by inserting “or the Alaska natural gas  
12 credit” after “producer credit”.

13 (d) CLERICAL AMENDMENT.—The table of sections  
14 for subpart D of part IV of subchapter A of chapter 1,  
15 as amended by this Act, is amended by adding at the end  
16 the following new item:

“Sec. 45M. Alaska natural gas.”.

17 **SEC. 704. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-**  
18 **FREE SALES ENTERPRISES.**

19 (a) PROHIBITION.—Section 555(b) of the Tariff Act  
20 of 1930 (19 U.S.C. 1555(b)) is amended—

21 (1) by redesignating paragraphs (6) through  
22 (8) as paragraphs (7) through (9), respectively; and  
23 (2) by inserting after paragraph (5) the fol-  
24 lowing:

1           “(6) Any gasoline or diesel fuel sold at a duty-  
 2           free sales enterprise shall be considered to be en-  
 3           tered for consumption into the customs territory of  
 4           the United States.”.

5           (b) CONSTRUCTION.—The amendments made by this  
 6           section shall not be construed to create any inference with  
 7           respect to the interpretation of any provision of law as  
 8           such provision was in effect on the day before the date  
 9           of enactment of this Act.

10          (c) EFFECTIVE DATE.—The amendments made by  
 11          this section shall take effect on the date of enactment of  
 12          this Act.

13       **SEC. 705. CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR**  
 14                               **AGRICULTURAL AERIAL APPLICATORS.**

15          (a) NO WAIVER BY FARM OWNER, TENANT, OR OP-  
 16          ERATOR NECESSARY.—Subparagraph (B) of section  
 17          6420(c)(4) (relating to certain farming use other than by  
 18          owner, etc.) is amended to read as follows:

19                       “(B) if the person so using the gasoline is  
 20                       an aerial or other applicator of fertilizers or  
 21                       other substances and is the ultimate purchaser  
 22                       of the gasoline, then subparagraph (A) of this  
 23                       paragraph shall not apply and the aerial or  
 24                       other applicator shall be treated as having used  
 25                       such gasoline on a farm for farming purposes.”.

1 (b) EXEMPTION INCLUDES FUEL USED BETWEEN  
 2 AIRFIELD AND FARM.—Section 6420(c)(4), as amended  
 3 by subsection (a), is amended by adding at the end the  
 4 following new flush sentence:

5 “For purposes of this paragraph, in the case of an  
 6 aerial applicator, gasoline shall be treated as used on  
 7 a farm for farming purposes if the gasoline is used  
 8 for the direct flight between the airfield and 1 or  
 9 more farms.”.

10 (c) EXEMPTION FROM TAX ON AIR TRANSPOR-  
 11 TATION OF PERSONS FOR FORESTRY PURPOSES EX-  
 12 TENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of  
 13 section 4261 (relating to tax on air transportation of per-  
 14 sons) is amended to read as follows:

15 “(f) EXEMPTION FOR CERTAIN USES.—No tax shall  
 16 be imposed under subsection (a) or (b) on air transpor-  
 17 tation—

18 “(1) by helicopter for the purpose of trans-  
 19 porting individuals, equipment, or supplies in the ex-  
 20 ploration for, or the development or removal of, hard  
 21 minerals, oil, or gas, or

22 “(2) by helicopter or by fixed-wing aircraft for  
 23 the purpose of the planting, cultivation, cutting, or  
 24 transportation of, or caring for, trees (including log-  
 25 ging operations),



1 but only if the helicopter or fixed-wing aircraft does not  
 2 take off from, or land at, a facility eligible for assistance  
 3 under the Airport and Airway Development Act of 1970,  
 4 or otherwise use services provided pursuant to section  
 5 44509 or 44913(b) or subchapter I of chapter 471 of title  
 6 49, United States Code, during such use. In the case of  
 7 helicopter transportation described in paragraph (1), this  
 8 subsection shall be applied by treating each flight segment  
 9 as a distinct flight.”.

10 (d) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to fuel use or air transportation  
 12 after December 31, 2002, and before January 1, 2004.

13 **SEC. 706. MODIFICATION OF RURAL AIRPORT DEFINITION.**

14 (a) IN GENERAL.—Clause (ii) of section  
 15 4261(e)(1)(B) (defining rural airport) is amended by  
 16 striking the period at the end of subclause (II) and insert-  
 17 ing “, or” and by adding at the end the following new  
 18 subclause:

19 “(III) is not connected by paved  
 20 roads to another airport.”.

21 (b) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to calendar years beginning after  
 23 2003.

1 **SEC. 707. EXEMPTION FROM TICKET TAXES FOR TRANS-**  
2 **PORTATION PROVIDED BY SEAPLANES.**

3 (a) IN GENERAL.—The taxes imposed by sections  
4 4261 and 4271 shall not apply to transportation by a sea-  
5 plane with respect to any segment consisting of a takeoff  
6 from, and a landing on, water.

7 (b) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to calendar years beginning after  
9 2003.

○