

108TH CONGRESS  
1ST SESSION

**S. 758**

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain energy-efficient property.

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2003

Mr. LIEBERMAN (for himself Ms. SNOWE, Mr. DODD, Mr. ALLEN, Mrs. CLINTON, Mr. HARKIN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Finance

# A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain energy-efficient property.

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. CREDIT FOR CERTAIN ENERGY-EFFICIENT  
4 PROPERTY.

5 (a) BUSINESS PROPERTY.—

6 (1) IN GENERAL.—Subparagraph (A) of section  
7 48(a)(3) of the Internal Revenue Code of 1986 (de-  
8 fining energy property) is amended by striking “or”  
9 at the end of clause (i), by adding “or” at the end

1 of clause (ii), and by inserting after clause (ii) the  
2 following new clause:

3 “(iii) energy-efficient building prop-  
4 erty.”.

5 (2) ENERGY-EFFICIENT BUILDING PROP-  
6 ERTY.—Subsection (a) of section 48 of such Code is  
7 amended by redesignating paragraphs (4) and (5) as  
8 paragraphs (5) and (6), respectively, and by insert-  
9 ing after paragraph (3) the following new para-  
10 graph:

11 “(4) ENERGY-EFFICIENT BUILDING PROP-  
12 ERTY.—For purposes of this subsection—

13 “(A) IN GENERAL.—The term ‘energy-ef-  
14 ficient building property’ means a fuel cell power  
15 plant that—

16 “(i) generates electricity using an  
17 electrochemical process,

18 “(ii) has an electricity-only generation  
19 efficiency greater than 30 percent, and

20 “(iii) generates at least 0.5 kilowatt of  
21 electricity using an electrochemical process.

22 “(B) LIMITATION.—In the case of energy-  
23 efficient building property placed in service dur-  
24 ing the taxable year, the credit determined  
25 under paragraph (1) for such year with respect

1 to such property shall not exceed an amount  
2 equal to the lesser of—

3 “(i) 30 percent of the basis of such  
4 property, including expenditures for labor  
5 costs properly allocable to the onsite prepara-  
6 tion, assembly, or original installation of  
7 the property and for piping or wiring to  
8 interconnect such property, or

9 “(ii) \$1,000 for each kilowatt of ca-  
10 pacity of such property.

11 “(C) SPECIAL RULES.—For purposes of  
12 subparagraph (A)(ii)—

13 “(i) ELECTRICITY-ONLY GENERATION  
14 EFFICIENCY.—The electricity-only genera-  
15 tion efficiency percentage of a fuel cell  
16 power plant is the fraction—

17 “(I) the numerator of which is  
18 the total useful electrical power pro-  
19 duced by such plant at normal oper-  
20 ating rates, and expected to be con-  
21 sumed in its normal application, and

22 “(II) the denominator of which is  
23 the lower heating value of the fuel  
24 source for such plant.

1                             “(ii) DETERMINATIONS MADE ON BTU  
2                             BASIS.—The electricity-only generation ef-  
3                             ficiency percentage shall be determined on  
4                             a Btu basis.

5                             “(D) FUEL CELL POWER PLANT.—The  
6                             term ‘fuel cell power plant’ means an integrated  
7                             system comprised of a fuel cell stack assembly  
8                             and associated balance of plant components  
9                             that converts a fuel into electricity using elec-  
10                             trochemical means.

11                             “(E) TERMINATION.—Such term shall not  
12                             include any property placed in service after De-  
13                             cember 31, 2008.”.

14                             (3) LIMITATION.—Section 48(a)(2)(A) of such  
15                             Code (relating to energy percentage) is amended to  
16                             read as follows:

17                             “(A) IN GENERAL.—The energy percent-  
18                             age is—

19                             “(i) in the case of energy-efficient  
20                             building property, 30 percent, and  
21                             “(ii) in the case of any other energy  
22                             property, 10 percent.”.

23                             (4) CONFORMING AMENDMENTS.—

24                             (A) Section 29(b)(3)(A)(i)(III) of such  
25                             Code is amended by striking “section

1                   48(a)(4)(C)”       and       inserting       “section  
2                   48(a)(5)(C)”.

3                   (B) Section 48(a)(1) of such Code is  
4                   amended by inserting “except as provided in  
5                   paragraph (4)(B),” before “the energy”.

6                   (5) EFFECTIVE DATE.—The amendments made  
7                   by this subsection shall apply to property placed in  
8                   service after December 31, 2003, under rules similar  
9                   to the rules of section 48(m) of the Internal Revenue  
10                   Code of 1986 (as in effect on the day before the  
11                   date of the enactment of the Revenue Reconciliation  
12                   Act of 1990).

13                   (b) NONBUSINESS PROPERTY.—

14                   (1) IN GENERAL.—Subpart A of part IV of sub-  
15                   chapter A of chapter 1 of the Internal Revenue Code  
16                   of 1986 (relating to nonrefundable personal credits)  
17                   is amended by inserting after section 25B the fol-  
18                   lowing new section:

19                   **“SEC. 25C. NONBUSINESS ENERGY-EFFICIENT BUILDING  
20                   PROPERTY.**

21                   “(a) CREDIT ALLOWED.—

22                   “(1) IN GENERAL.—In the case of an indi-  
23                   vidual, there shall be allowed as a credit against the  
24                   tax imposed by this chapter for the taxable year an  
25                   amount equal to the nonbusiness energy-efficient

1 building property expenditures which are paid or in-  
2 curred during such year.

3       “(2) LIMITATION.—The credit allowed under  
4 paragraph (1) with respect to property placed in  
5 service by the taxpayer during the taxable year shall  
6 not exceed an amount equal to the lesser of—

7           “(A) 30 percent of the basis of such prop-  
8 erty, or

9           “(B) \$1,000 for each kilowatt of capacity  
10           of such property.

11       “(b) NONBUSINESS ENERGY-EFFICIENT BUILDING  
12 PROPERTY EXPENDITURES.—For purposes of this sec-  
13 tion—

14           “(1) IN GENERAL.—The term ‘nonbusiness en-  
15 ergy-efficient building property expenditures’ means  
16 expenditures made by the taxpayer for nonbusiness  
17 energy-efficient building property installed on or in  
18 connection with a dwelling unit—

19           “(A) which is located in the United States,  
20           and

21           “(B) which is used by the taxpayer as a  
22 residence.

23       Such term includes expenditures for labor costs  
24       properly allocable to the onsite preparation, assem-  
25       bly, or original installation of the property.

1           “(2) NONBUSINESS ENERGY-EFFICIENT BUILD-  
2        ING PROPERTY.—The term ‘nonbusiness energy-effi-  
3        cient building property’ means energy-efficient build-  
4        ing property (as defined in section 48(a)(4)) if—

5           “(A) the original use of such property com-  
6        mences with the taxpayer, and

7           “(B) such property meets the standards (if  
8        any) applicable to such property under section  
9        48(a)(3).

10          “(c) SPECIAL RULES.—For purposes of this sec-  
11        tion—

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

17           “(A) The amount of the credit allowable,  
18        under subsection (a) by reason of expenditures  
19        (as the case may be) made during such cal-  
20        endar year by any of such individuals with re-  
21        spect to such dwelling unit shall be determined  
22        by treating all of such individuals as 1 taxpayer  
23        whose taxable year is such calendar year.

24           “(B) There shall be allowable, with respect  
25        to such expenditures to each of such individ-

1           uals, a credit under subsection (a) for the tax-  
2           able year in which such calendar year ends in  
3           an amount which bears the same ratio to the  
4           amount determined under subparagraph (A) as  
5           the amount of such expenditures made by such  
6           individual during such calendar year bears to  
7           the aggregate of such expenditures made by all  
8           of such individuals during such calendar year.

9           “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
10           HOUSING CORPORATION.—In the case of an indi-  
11           vidual who is a tenant-stockholder (as defined in sec-  
12           tion 216) in a cooperative housing corporation (as  
13           defined in such section), such individual shall be  
14           treated as having made his tenant-stockholder’s pro-  
15           portionate share (as defined in section 216(b)(3)) of  
16           any expenditures of such corporation.

17           “(3) CONDOMINIUMS.—

18           “(A) IN GENERAL.—In the case of an indi-  
19           vidual who is a member of a condominium man-  
20           agement association with respect to a condo-  
21           minium which the individual owns, such indi-  
22           vidual shall be treated as having made his pro-  
23           portionate share of any expenditures of such as-  
24           sociation.

1                     “(B) CONDOMINIUM MANAGEMENT ASSO-  
2                     CIATION.—For purposes of this paragraph, the  
3                     term ‘condominium management association’  
4                     means an organization which meets the require-  
5                     ments of paragraph (1) of section 528(c) (other  
6                     than subparagraph (E) thereof) with respect to  
7                     a condominium project substantially all of the  
8                     units of which are used as residences.

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

14                     “(5) WHEN EXPENDITURE MADE; AMOUNT OF  
15                     EXPENDITURE.—

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

20                     “(B) EXPENDITURES PART OF BUILDING  
21                     CONSTRUCTION.—In the case of an expenditure  
22                     in connection with the construction or recon-  
23                     struction of a structure, such expenditure shall  
24                     be treated as made when the original use of the

1                   constructed or reconstructed structure by the  
2                   taxpayer begins.

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

5       “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
6       ERGY FINANCING.—For purposes of determining the  
7       amount of nonbusiness energy-efficient building  
8       property expenditures made by any individual with  
9       respect to any dwelling unit, there shall not be taken  
10      into account expenditures which are made from sub-  
11      sidized energy financing (as defined in section  
12      48(a)(5)(C)).

13       “(d) BASIS ADJUSTMENTS.—For purposes of this  
14 subtitle, if a credit is allowed under this section for any  
15 expenditure with respect to any property, the increase in  
16 the 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        "(e) TERMINATION.—This section shall not apply to  
20 any expenditure made after December 31, 2008.".

21 (2) CONFORMING AMENDMENTS.—

22 (A) Subsection (a) of section 1016 of such  
23 Code is amended by striking “and” at the end  
24 of paragraph (27), by striking the period at the  
25 end of paragraph (28) and inserting “; and”,

1           and by adding at the end the following new  
2           paragraph:

3           “(29) to the extent provided in section 25C(d),  
4           in the case of amounts with respect to which a credit  
5           has been allowed under section 25C.”.

6           (B) The table of sections for subpart A of  
7           part IV of subchapter A of chapter 1 of such  
8           Code is amended by inserting after the item re-  
9           lating to section 25B the following new item:

“Sec. 25C. Nonbusiness energy-efficient building property.”.

10          (3) EFFECTIVE DATE.—The amendments made  
11          by this subsection shall apply to expenditures made  
12          after December 31, 2003.

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