

109TH CONGRESS  
1ST SESSION

# S. 671

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain fuel cell property.

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IN THE SENATE OF THE UNITED STATES

MARCH 17, 2005

Mr. LIEBERMAN (for himself, Ms. SNOWE, Mr. SMITH, and Mr. AKAKA) 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 allow a credit against income tax for certain fuel cell 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

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

“(iii) energy-efficient building property,”.

(2) ENERGY-EFFICIENT BUILDING PROPERTY.—Subsection (a) of section 48 of such Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) ENERGY-EFFICIENT BUILDING PROPERTY.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘energy-efficient building property’ means a fuel cell power plant that—

“(i) generates electricity using an electrochemical process, and

“(ii) generates at least 0.5 kilowatt of electricity using an electrochemical process.

“(B) LIMITATION.—In the case of energy-efficient building 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—

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

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

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

15 “(D) TERMINATION.—Such term shall not  
 16 include any property placed in service after De-  
 17 cember 31, 2009.”.

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

21 “(A) IN GENERAL.—The energy percent-  
 22 age is—

23 “(i) in the case of energy-efficient  
 24 building property, 30 percent, and

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

3 (4) CONFORMING AMENDMENTS.—

4 (A) Section 29(b)(3)(A)(i)(III) of such  
5 Code is amended by striking “section  
6 48(a)(4)(C)” and inserting “section  
7 48(a)(5)(C)”.

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

11 (5) EFFECTIVE DATE.—The amendments made  
12 by this subsection shall apply to property placed in  
13 service after December 31, 2004, under rules similar  
14 to the rules of section 48(m) of the Internal Revenue  
15 Code of 1986 (as in effect on the day before the  
16 date of the enactment of the Revenue Reconciliation  
17 Act of 1990).

18 (b) NONBUSINESS PROPERTY.—

19 (1) IN GENERAL.—Subpart A of part IV of sub-  
20 chapter A of chapter 1 of the Internal Revenue Code  
21 of 1986 (relating to nonrefundable personal credits)  
22 is amended by inserting after section 25B the fol-  
23 lowing new section:

1 **“SEC. 25C. NONBUSINESS ENERGY-EFFICIENT BUILDING**  
 2 **PROPERTY.**

3 “(a) CREDIT ALLOWED.—

4 “(1) IN GENERAL.—In the case of an indi-  
 5 vidual, there shall be allowed as a credit against the  
 6 tax imposed by this chapter for the taxable year an  
 7 amount equal to the nonbusiness energy-efficient  
 8 building property expenditures which are paid or in-  
 9 curred during such year.

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

14 “(A) 30 percent of the basis of such prop-  
 15 erty, or

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

18 “(b) NONBUSINESS ENERGY-EFFICIENT BUILDING  
 19 PROPERTY EXPENDITURES.—For purposes of this sec-  
 20 tion—

21 “(1) IN GENERAL.—The term ‘nonbusiness en-  
 22 ergy-efficient building property expenditures’ means  
 23 expenditures made by the taxpayer for nonbusiness  
 24 energy-efficient building property installed on or in  
 25 connection with a dwelling unit—

1                   “(A) which is located in the United States,  
2                   and

3                   “(B) which is used by the taxpayer as a  
4                   residence.

5           Such term includes expenditures for labor costs  
6           properly allocable to the onsite preparation, assem-  
7           bly, or original installation of the property.

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

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

14                   “(B) such property meets the standards (if  
15                  any) applicable to such property under section  
16                  48(a)(3).

17           “(c) SPECIAL RULES.—For purposes of this sec-  
18          tion—

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

24                   “(A) The amount of the credit allowable,  
25                  under subsection (a) by reason of expenditures

(as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

“(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

“(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder’s proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

“(3) CONDOMINIUMS.—

1           “(A) IN GENERAL.—In the case of an indi-  
 2           vidual who is a member of a condominium man-  
 3           agement association with respect to a condo-  
 4           minium which the individual owns, such indi-  
 5           vidual shall be treated as having made his pro-  
 6           portionate share of any expenditures of such as-  
 7           sociation.

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

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

21          “(5) WHEN EXPENDITURE MADE; AMOUNT OF  
 22          EXPENDITURE.—

23                 “(A) IN GENERAL.—Except as provided in  
 24                 subparagraph (B), an expenditure with respect



1 to an item shall be treated as made when the  
2 original installation of the item is completed.

3 “(B) EXPENDITURES PART OF BUILDING  
4 CONSTRUCTION.—In the case of an expenditure  
5 in connection with the construction or recon-  
6 struction of a structure, such expenditure shall  
7 be treated as made when the original use of the  
8 constructed or reconstructed structure by the  
9 taxpayer begins.

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

12 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
13 ERGY FINANCING.—For purposes of determining the  
14 amount of nonbusiness energy-efficient building  
15 property expenditures made by any individual with  
16 respect to any dwelling unit, there shall not be taken  
17 into account expenditures which are made from sub-  
18 sidized energy financing (as defined in section  
19 48(a)(5)(C)).

20 “(d) BASIS ADJUSTMENTS.—For purposes of this  
21 subtitle, if a credit is allowed under this section for any  
22 expenditure with respect to any property, the increase in  
23 the basis of such property which would (but for this sub-  
24 section) result from such expenditure shall be reduced by  
25 the amount of the credit so allowed.

1       “(e) TERMINATION.—This section shall not apply to  
2 any expenditure made after December 31, 2009.”.

3           (2) CONFORMING AMENDMENTS.—

4           (A) Subsection (a) of section 1016 of such  
5 Code is amended by striking “and” at the end  
6 of paragraph (30), by striking the period at the  
7 end of paragraph (31) and inserting “; and”,  
8 and by adding at the end the following new  
9 paragraph:

10       “(32) to the extent provided in section 25C(d),  
11 in the case of amounts with respect to which a credit  
12 has been allowed under section 25C.”.

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

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

17           (3) EFFECTIVE DATE.—The amendments made  
18 by this subsection shall apply to expenditures made  
19 after December 31, 2004.

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