

111TH CONGRESS
1ST SESSION

S. 1639

To amend the Internal Revenue Code of 1986 to improve and extend certain energy-related tax provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. BINGAMAN (for himself, Ms. SNOWE, and Mrs. FEINSTEIN) 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 improve and extend certain energy-related tax provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Expanding Industrial Energy Efficiency Incentives Act
7 of 2009”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-
9 wise expressly provided, whenever in this Act an amend-
10 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

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

- Sec. 1. Short title; amendment of 1986 Code; table of contents.
- Sec. 2. Modifications in credit for combined heat and power system property.
- Sec. 3. Motor energy efficiency improvement tax credit.
- Sec. 4. Credit for replacement of CFC refrigerant chiller.
- Sec. 5. Qualifying efficient industrial process water use project credit.

6 **SEC. 2. MODIFICATIONS IN CREDIT FOR COMBINED HEAT**
 7 **AND POWER SYSTEM PROPERTY.**

8 (a) MODIFICATION OF CERTAIN CAPACITY LIMITA-
 9 TIONS.—Section 48(c)(3)(B) is amended—

- 10 (1) by striking “15 megawatts” in clause (ii)
- 11 and inserting “25 megawatts”,
- 12 (2) by striking “20,000 horsepower” in clause
- 13 (ii) and inserting “34,000 horsepower”, and
- 14 (3) by striking clause (iii).

15 (b) NONAPPLICATION OF CERTAIN RULES.—Section
 16 48(c)(3)(C) is amended by adding at the end the following
 17 new clause:

- 18 “(iv) NONAPPLICATION OF CERTAIN
- 19 RULES.—For purposes of determining if
- 20 the term ‘combined heat and power system
- 21 property’ includes technologies which gen-
- 22 erate electricity or mechanical power using
- 23 back-pressure steam turbines in place of

1 existing pressure-reducing valves or which
 2 make use of waste heat from industrial
 3 processes such as by using organic
 4 rankine, stirling, or kalina heat engine sys-
 5 tems, subparagraph (A) shall be applied
 6 without regard to clause (ii).”.

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

13 **SEC. 3. MOTOR ENERGY EFFICIENCY IMPROVEMENT TAX**
 14 **CREDIT.**

15 (a) IN GENERAL.—Subpart D of part IV of sub-
 16 chapter A of chapter 1 is amended by adding at the end
 17 the following new section:

18 **“SEC. 45R. MOTOR ENERGY EFFICIENCY IMPROVEMENT**
 19 **TAX CREDIT.**

20 “(a) IN GENERAL.—For purposes of section 38, the
 21 motor energy efficiency improvement tax credit deter-
 22 mined under this section for the taxable year is an amount
 23 equal to \$120 multiplied by the motor horsepower of an
 24 appliance, machine, or equipment—

1 “(1) manufactured in such taxable year by a
2 manufacturer which incorporates an advanced motor
3 system into a newly designed appliance, machine, or
4 equipment or into a redesigned appliance, machine,
5 or equipment which did not previously make use of
6 the advanced motor system, or

7 “(2) placed back into service in such taxable
8 year by an end user which upgrades an existing ap-
9 pliance, machine, or equipment with an advanced
10 motor system.

11 For any advanced motor system with a total horsepower
12 of less than 10, such motor energy efficiency improvement
13 tax credit is an amount which bears the same ratio to
14 \$120 as 1 horsepower bears to such total horsepower.

15 “(b) ADVANCED MOTOR SYSTEM.—For purposes of
16 this section, the term ‘advanced motor system’ means a
17 motor and any required associated electronic control
18 which—

19 “(1) offers variable or multiple speed operation,
20 and

21 “(2) uses permanent magnet technology, elec-
22 tronically commutated motor technology, switched
23 reluctance motor technology, or such other motor
24 systems technologies as determined by the Secretary
25 of Energy.

1 “(c) AGGREGATE PER TAXPAYER LIMITATION.—

2 “(1) IN GENERAL.—The amount of the credit
3 determined under this section for any taxpayer for
4 any taxable year shall not exceed the excess (if any)
5 of \$2,000,000 over the aggregate credits allowed
6 under this section with respect to such taxpayer for
7 all prior taxable years.

8 “(2) AGGREGATION RULES.—For purposes of
9 this section, all persons treated as a single employer
10 under subsections (a) and (b) of section 52 shall be
11 treated as 1 taxpayer.

12 “(d) SPECIAL RULES.—

13 “(1) BASIS REDUCTION.—For purposes of this
14 subtitle, the basis of any property for which a credit
15 is allowable under subsection (a) shall be reduced by
16 the amount of such credit so allowed.

17 “(2) NO DOUBLE BENEFIT.—No other credit
18 shall be allowable under this chapter for property
19 with respect to which a credit is allowed under this
20 section.

21 “(3) PROPERTY USED OUTSIDE UNITED STATES
22 NOT QUALIFIED.—No credit shall be allowable under
23 subsection (a) with respect to any property referred
24 to in section 50(b)(1).

1 “(e) APPLICATION.—This section shall not apply to
 2 property manufactured or placed back into service before
 3 the date which is 6 months after the date of the enactment
 4 of this section or after December 31, 2013.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 38(b) is amended by striking “plus”
 7 at the end of paragraph (34), by striking the period
 8 at the end of paragraph (35) and inserting “, plus”,
 9 and by adding at the end the following new para-
 10 graph:

11 “(36) the motor energy efficiency improvement
 12 tax credit determined under section 45R.”.

13 (2) Section 1016(a) is amended by striking
 14 “and” at the end of paragraph (36), by striking the
 15 period at the end of paragraph (37) and inserting “,
 16 and”, and by adding at the end the following new
 17 paragraph:

18 “(38) to the extent provided in section
 19 45R(d)(1).”.

20 (3) The table of sections for subpart D of part
 21 IV of subchapter A of chapter 1 is amended by add-
 22 ing at the end the following new item:

“Sec. 45R. Motor energy efficiency improvement tax credit.”.

23 (c) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to property manufactured or

1 placed back into service after the date which is 6 months
 2 after the date of the enactment of this Act.

3 **SEC. 4. CREDIT FOR REPLACEMENT OF CFC REFRIGERANT**
 4 **CHILLER.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
 6 chapter A of chapter 1, as amended by this Act, is amend-
 7 ed by adding at the end the following new section:

8 **“SEC. 45S. CFC CHILLER REPLACEMENT CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, the
 10 CFC chiller replacement credit determined under this sec-
 11 tion for the taxable year is an amount equal to—

12 “(1) \$150 multiplied by the tonnage rating of
 13 a CFC chiller replaced with a new efficient chiller
 14 that is placed in service by the taxpayer during the
 15 taxable year, plus

16 “(2) if all chilled water distribution pumps con-
 17 nected to the new efficient chiller include variable
 18 frequency drives, \$100 multiplied by any tonnage
 19 downsizing.

20 “(b) CFC CHILLER.—For purposes of this section,
 21 the term ‘CFC chiller’ includes property which—

22 “(1) was installed after 1980 and before 1993,

23 “(2) utilizes chlorofluorocarbon refrigerant, and

1 “(3) until replaced by a new efficient chiller,
2 has remained in operation and utilized for cooling a
3 commercial building.

4 “(c) NEW EFFICIENT CHILLER.—For purposes of
5 this section, the term ‘new efficient chiller’ includes a
6 water-cooled chiller which is certified to meet efficiency
7 standards effective on January 1, 2010, as defined in table
8 6.8.1c in Addendum M to Standard 90.1–2007 of the
9 American Society of Heating, Refrigerating, and Air Con-
10 ditioning Engineers.

11 “(d) TONNAGE DOWNSIZING.—For purposes of this
12 section, the term ‘tonnage downsizing’ means the amount
13 by which the tonnage rating of the CFC chiller exceeds
14 the tonnage rating of the new efficient chiller.

15 “(e) ENERGY AUDIT.—As a condition of receiving a
16 tax credit under this section, an energy audit shall be per-
17 formed on the building prior to installation of the new effi-
18 cient chiller, identifying cost-effective energy-saving meas-
19 ures, particularly measures that could contribute to chiller
20 downsizing. The audit shall satisfy criteria that shall be
21 issued by the Secretary of Energy.

22 “(f) PROPERTY USED BY TAX-EXEMPT ENTITY.—In
23 the case of a CFC chiller replaced by a new efficient chiller
24 the use of which is described in paragraph (3) or (4) of
25 section 50(b), the person who sold such new efficient chill-

er to the entity shall be treated as the taxpayer that placed in service the new efficient chiller that replaced the CFC chiller, but only if such person clearly discloses to such entity in a document the amount of any credit allowable under subsection (a) and the person certifies to the Secretary that the person reduced the price the entity paid for such new efficient chiller by the entire amount of such credit.

“(g) TERMINATION.—This section shall not apply to replacements made after December 31, 2012.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b), as amended by this Act, is amended by striking “plus” at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting “, plus”, and by adding at the end the following new paragraph:

“(37) the CFC chiller replacement credit determined under section 45S.”.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

“Sec. 45S. CFC chiller replacement credit.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to replacements made after the date of the enactment of this Act.

1 **SEC. 5. QUALIFYING EFFICIENT INDUSTRIAL PROCESS**
2 **WATER USE PROJECT CREDIT.**

3 (a) IN GENERAL.—Section 46 is amended by striking
4 “and” at the end of paragraph (4), by striking the period
5 at the end of paragraph (5), and by adding at the end
6 the following new paragraph:

7 “(6) the qualifying efficient industrial process
8 water use project credit.”.

9 (b) AMOUNT OF CREDIT.—Subpart E of part IV of
10 subchapter A of chapter 1 is amended by inserting after
11 section 48C the following new section:

12 **“SEC. 48D. QUALIFYING EFFICIENT INDUSTRIAL PROCESS**
13 **WATER USE PROJECT CREDIT.**

14 “(a) IN GENERAL.—

15 “(1) ALLOWANCE OF CREDIT.—For purposes of
16 section 46, the qualifying efficient industrial process
17 water use project credit for any taxable year is an
18 amount equal to the applicable percentage of the
19 qualified investment for such taxable year with re-
20 spect to any qualifying efficient industrial process
21 water use project of the taxpayer.

22 “(2) APPLICABLE PERCENTAGE.—For purposes
23 of subsection (a), the applicable percentage is—

24 “(A) 10 percent in the case of a qualifying
25 efficient industrial process water use project
26 which achieves a net energy consumption of less

1 than 3,000 kilowatt hours per million gallons of
2 water, and is placed in service before January
3 1, 2013,

4 “(B) 20 percent in the case of a qualifying
5 efficient industrial process water use project
6 which achieves a net energy consumption of less
7 than 2,000 kilowatt hours per million gallons of
8 water, and

9 “(C) 30 percent in the case of a qualifying
10 efficient industrial process water use project
11 which achieves a net energy consumption of less
12 than 1,000 kilowatt hours per million gallons of
13 water.

14 “(b) QUALIFIED INVESTMENT.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a), the qualified investment for any taxable year is
17 the basis of eligible property placed in service by the
18 taxpayer during such taxable year which is part of
19 a qualifying efficient industrial process water use
20 project.

21 “(2) EXCEPTIONS.—Such term shall not in-
22 clude any portion of the basis related to—

23 “(A) permitting,

24 “(B) land acquisition, or

1 “(C) infrastructure associated with
2 sourcing or water discharge.

3 “(3) CERTAIN QUALIFIED PROGRESS EXPENDI-
4 TURES RULES MADE APPLICABLE.—Rules similar to
5 the rules of subsections (c)(4) and (d) of section 46
6 (as in effect on the day before the enactment of the
7 Revenue Reconciliation Act of 1990) shall apply for
8 purposes of this section.

9 “(4) SPECIAL RULE FOR SUBSIDIZED ENERGY
10 FINANCING.—Rules similar to the rules of section
11 48(a)(4) (without regard to subparagraph (D) there-
12 of) shall apply for purposes of this section.

13 “(5) LIMITATION.—The amount which is treat-
14 ed for all taxable years with respect to any quali-
15 fying efficient industrial process water use project
16 with respect to any site shall not exceed
17 \$10,000,000.

18 “(c) DEFINITIONS.—

19 “(1) QUALIFYING EFFICIENT INDUSTRIAL
20 PROCESS WATER USE PROJECT.—The term ‘quali-
21 fying efficient industrial process water use project’
22 means, with respect to any site, a project—

23 “(A) which replaces or modifies a system
24 for the use of water or steam in the production
25 of goods in the trade or business of manufac-

1 turing (including any system for the use of
2 water derived from blow-down from cooling tow-
3 ers and steam systems in the generation of elec-
4 tric power at a site also used for the production
5 of goods in the trade or business of manufac-
6 turing), and

7 “(B) which is designed to achieve—

8 “(i) a reduction of not less than 20
9 percent in water withdrawal and a reduc-
10 tion of not less than 10 percent of water
11 discharge when compared to the existing
12 water use at the site, or

13 “(ii) a reduction of not less than 10
14 percent in water withdrawal and a reduc-
15 tion of not less than 20 percent of water
16 discharge when compared to the existing
17 water use at the site.

18 “(2) ELIGIBLE PROPERTY.—The term ‘eligible
19 property’ means any property—

20 “(A) which is part of a qualifying efficient
21 industrial process water use project and which
22 is necessary for the reduction in withdrawals or
23 discharge described in paragraph (1)(B),

1 “(B)(i) the construction, reconstruction, or
2 erection of which is completed by the taxpayer,
3 or

4 “(ii) which is acquired by the taxpayer if
5 the original use of such property commences
6 with the taxpayer, and

7 “(C) with respect to which depreciation (or
8 amortization in lieu of depreciation) is allow-
9 able.

10 “(3) NET ENERGY CONSUMPTION.—The term
11 ‘net energy consumption’ means the energy con-
12 sumed, both on-site and off-site, with respect to the
13 water described in paragraph (1)(A). Net energy
14 consumption shall be normalized per unit of indus-
15 trial output and measured under rules and proce-
16 dures established by the Secretary, in consultation
17 with the Administrator of the Environmental Protec-
18 tion Agency.

19 “(4) WATER DISCHARGE.—The term ‘water dis-
20 charge’ means all water leaving the site via per-
21 mitted or unpermitted surface water discharges, dis-
22 charges to publicly owned treatment works, and
23 shallow- or deep-injection (whether on-site or off-
24 site).

1 “(5) WATER WITHDRAWAL.—The term ‘water
2 withdrawal’ means all water taken for use at the site
3 from on-site ground and surface water sources to-
4 gether with any water supplied to the site by a pub-
5 lic water system.

6 “(d) TERMINATION.—This section shall not apply to
7 periods after December 31, 2014, under rules similar to
8 the rules of section 48(m) (as in effect on the day before
9 the date of the enactment of the Revenue Reconciliation
10 Act of 1990).”.

11 (c) CONFORMING AMENDMENTS.—

12 (1) Section 49(a)(1)(C) is amended by striking
13 “and” at the end of clause (iv), by striking the pe-
14 riod at the end of clause (v) and inserting “, and”,
15 and by adding after clause (v) the following new
16 clause:

17 “(vi) the basis of any property which
18 is part of a qualifying efficient industrial
19 use water project under section 48D.”.

20 (2) The table of sections for subpart E of part
21 IV of subchapter A of chapter 1 is amended by in-
22 serting after the item relating to section 48B the fol-
23 lowing new item:

 “Sec. 48D. Qualifying efficient industrial process water use project credit.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to periods after January 1, 2011,

1 under rules similar to the rules of section 48(m) of the
2 Internal Revenue Code of 1986 (as in effect on the day
3 before the date of the enactment of the Revenue Reconcili-
4 ation Act of 1990).

○