

111TH CONGRESS  
2D SESSION

# S. 3212

To amend the Internal Revenue Code of 1986 and section 1603 of the American Recovery and Reinvestment Tax Act of 2009 to provide that qualified energy efficiency property is eligible for the energy credit and the Department of Treasury grant.

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## IN THE SENATE OF THE UNITED STATES

APRIL 15, 2010

Mr. MENENDEZ 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 and section 1603 of the American Recovery and Reinvestment Tax Act of 2009 to provide that qualified energy efficiency property is eligible for the energy credit and the Department of Treasury grant.

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. QUALIFIED ENERGY EFFICIENCY PROPERTY**

4                       **ELIGIBLE FOR ENERGY CREDIT AND GRANTS.**

5       (a) IN GENERAL.—Subparagraph (A) of section  
6       48(a)(3) of the Internal Revenue Code of 1986 is amended  
7       by striking “or” at the end of clause (vi), by adding “or”

1 at the end of clause (vii), and by inserting after clause  
 2 (vii) the following new clause:

3 “(viii) qualified energy efficiency prop-  
 4 erty,”.

5 (b) ENERGY PERCENTAGE.—Clause (i) of section  
 6 48(a)(2)(A) of the Internal Revenue Code of 1986 is  
 7 amended by striking “and” at the end of subclause (III)  
 8 and by inserting after subclause (IV) the following new  
 9 subclause:

10 “(V) qualified energy efficiency  
 11 property described in paragraph  
 12 (3)(A)(viii), and”.

13 (c) QUALIFIED ENERGY EFFICIENCY PROPERTY.—  
 14 Section 48(c) of the Internal Revenue Code of 1986 is  
 15 amended by adding at the end the following new para-  
 16 graph:

17 “(5) QUALIFIED ENERGY EFFICIENCY PROP-  
 18 erty.—

19 “(A) IN GENERAL.—The term ‘qualified  
 20 energy efficiency property’ means any prop-  
 21 erty—

22 “(i) which is residential rental prop-  
 23 erty, nonresidential real property, or mixed  
 24 use real property,

25 “(ii) which is a qualified building,

“(iii) which achieves a minimum energy savings of 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 (as defined by section 179D(c)(2)), determined under rules similar to the rules of section 179D(d)(2),

“(iv) in the case of property which is to be used for residential rental purposes, with respect to which the taxpayer makes a certification which meets the requirements of subparagraph (D), and

“(v) for which the taxpayer has received a reservation from the Secretary.

“(B) QUALIFIED BUILDING.—The term ‘qualified building’ means any building—

“(i) which—

“(I) is more than 150,000 square feet and has a floor area ratio (net of streets and public spaces) of not less than 3.0, or

“(II) in States with more than 35 percent of the population living in Census defined rural areas, is more than 50,000 square feet,

1 “(ii) which—

2 “(I) is located not more than  
3 one-half mile from a location in which  
4 there is direct access to a Fixed  
5 Guideway Transit System, or

6 “(II) in States with more than  
7 35 percent of the population living in  
8 Census defined rural areas, is part of  
9 a rural town center redevelopment  
10 project on land previously occupied by  
11 residential, commercial, or industrial  
12 uses and within a Census defined  
13 place containing at least 5,000 people  
14 and 1,000 jobs, and

15 “(iii) for which the site work and con-  
16 struction is commenced not later than 36  
17 months after the date of the enactment of  
18 this paragraph.

19 “(C) SPECIAL RULE FOR RESIDENTIAL  
20 RENTAL PROPERTY.—In the case of a qualified  
21 building in which the majority of the building  
22 is devoted to residential rental use—

23 “(i) subparagraph (A)(iii) shall be ap-  
24 plied by substituting ‘25 percent’ for ‘50  
25 percent’, and

1           “(ii) any mechanical systems which  
2           meet the requirements of Standard 90.1–  
3           2001 may be used in lieu of appendix G to  
4           such Standard in modeling energy use of a  
5           reference building.

6           “(D) AFFORDABLE HOUSING REQUIRE-  
7           MENTS.—

8           “(i) IN GENERAL.—A certification  
9           meets the requirements of this subpara-  
10          graph if the taxpayer certifies that at least  
11          5 percent of residential rental units will be  
12          affordable to households with incomes not  
13          exceeding 60 percent of the area median  
14          income at the time of initial occupancy.

15          “(ii) SAFE HARBOR.—A taxpayer  
16          shall be treated as meeting the require-  
17          ment of clause (i) if the taxpayer files with  
18          the municipal government where the quali-  
19          fied building is located a land use restric-  
20          tion agreement or similar agreement de-  
21          signed to ensure the units remain afford-  
22          able to an occupied by households de-  
23          scribed in clause (i) for the lesser of 99  
24          years or the longest period permissible

1 under the law of the State in which such  
2 units are located.

3 “(E) RESERVATIONS.—

4 “(i) IN GENERAL.—For purposes of  
5 subparagraph (A)(iv), the Secretary shall  
6 issue a reservation upon receipt of the fol-  
7 lowing:

8 “(I) Evidence that the project is  
9 designed to be a qualified energy effi-  
10 ciency property as described in clause  
11 (viii) of section 48(a)(3)(A) of the In-  
12 ternal Revenue Code of 1986.

13 “(II) Evidence that such prop-  
14 erty will be placed in service within a  
15 reasonable time by submission of a  
16 site plan approval from the local mu-  
17 nicipality, a letter of support from the  
18 municipality, a building permit, and  
19 an approved tax abatement agreement  
20 or other municipal financial support.

21 “(ii) MAINTENANCE OF RESERVA-  
22 TION.—To maintain such a reservation,  
23 the applicant must commence construction  
24 within 12 months of the date such reserva-  
25 tion was issued.

1           “(F) REGULATIONS.—The Secretary shall  
 2           prescribe such regulations as necessary to carry  
 3           out the purposes of this section not later than  
 4           2 months of the date of the enactment of this  
 5           paragraph.”.

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

12          (e) GRANTS IN LIEU OF TAX CREDITS.—

13           (1) IN GENERAL.—Subsection (d) of section  
 14          1603 of the American Recovery and Reinvestment  
 15          Tax Act of 2009 is amended by inserting after para-  
 16          graph (8) the following new subparagraph:

17           “(9) QUALIFIED ENERGY EFFICIENCY PROP-  
 18          PERTY.—Any qualified energy efficiency property as  
 19          described in clause (viii) of section 48(a)(3)(A) of  
 20          such Code.”.

21           (2) GRANT AMOUNT.—Subparagraph (A) of  
 22          section 1603(b)(2) of the American Recovery and  
 23          Reinvestment Tax Act of 2009 is amended to read  
 24          as follows:

1                   “(A) 30 percent in the case of any prop-  
2                   erty described in paragraph (1), (2), (3), (4), or  
3                   (9) of subsection (d), and”.

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