

112TH CONGRESS
2D SESSION

S. 2074

To amend the Internal Revenue Code of 1986 to expand the rehabilitation credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2012

Mr. CARDIN (for himself and Ms. SNOWE) 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 expand the rehabilitation credit, 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.**

4 This Act may be cited as the “Creating American
5 Prosperity through Preservation Act of 2012”.

6 **SEC. 2. INCREASE IN THE REHABILITATION CREDIT FOR**
7 **CERTAIN SMALLER PROJECTS.**

8 (a) IN GENERAL.—Section 47 of the Internal Rev-
9 enue Code of 1986 (relating to rehabilitation credit) is

1 amended by adding at the end the following new sub-
 2 section:

3 “(e) SPECIAL RULE REGARDING CERTAIN SMALLER
 4 PROJECTS.—

5 “(1) IN GENERAL.—In the case of any qualified
 6 rehabilitated building or portion thereof—

7 “(A) which is placed in service after the
 8 date of the enactment of this subsection, and

9 “(B) which is a smaller project,
 10 subsection (a)(2) shall be applied by substituting ‘30
 11 percent’ for ‘20 percent’.

12 “(2) MAXIMUM CREDIT.—The credit deter-
 13 mined under this subsection with respect to any
 14 smaller project for all taxable years shall not exceed
 15 \$1,500,000.

16 “(3) SMALLER PROJECT DEFINED.—

17 “(A) IN GENERAL.—For purposes of this
 18 subsection, the term ‘smaller project’ means
 19 any qualified rehabilitated building or portion
 20 thereof if—

21 “(i) the qualified rehabilitation ex-
 22 penditures taken into account for purposes
 23 of this section (or would have been so
 24 taken into account if this subsection had
 25 been in effect for all prior periods) with re-

1 spect to the rehabilitation are not over
2 \$7,500,000, and

3 “(ii) no credit was allowed under this
4 section for either of the 2 prior taxable
5 years with respect to such building.

6 “(B) PROGRESS EXPENDITURES.—Credit
7 allowable by reason of subsection (d) shall not
8 be taken into account under subparagraph
9 (A)(ii).”.

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

16 **SEC. 3. ADDITION OF ENERGY EFFICIENCY SUPPLEMENT**
17 **TO REHABILITATION CREDIT.**

18 (a) IN GENERAL.—Subsection (a) of section 47 of the
19 Internal Revenue Code of 1986 is amended by striking
20 “and” at the end of paragraph (1), by striking the period
21 at the end of paragraph (2) and inserting “, and”, and
22 by adding at the end the following new paragraph:

23 “(3) 2 percent of the qualified rehabilitation ex-
24 penditures if the building is a qualified energy effi-
25 cient rehabilitated building.”.

1 (b) QUALIFIED ENERGY EFFICIENT REHABILITATED
 2 BUILDING.—Section 47 of such Code, as amended by sec-
 3 tion 2, is amended by adding at the end the following new
 4 subsection:

5 “(f) QUALIFIED ENERGY EFFICIENT REHABILI-
 6 TATED BUILDING.—

7 “(1) IN GENERAL.—The term ‘qualified energy
 8 efficient rehabilitated building’ means any building
 9 (and its structural components) if—

10 “(A) the building is a qualified rehabili-
 11 tated building, and

12 “(B)(i) the rehabilitation is certified (in
 13 accordance with paragraph (4)) as being de-
 14 signed to achieve at least a 30 percent energy
 15 use reduction in the building’s energy use, or

16 “(ii) the building meets the requirements
 17 of paragraph (2)(B)(ii) and is determined under
 18 paragraph (2)(B) to achieve at least a 30 per-
 19 cent energy use reduction after being rehabili-
 20 tated.

21 “(2) DETERMINATION OF ENERGY USE REDUC-
 22 TION.—For purposes of paragraph (1)—

23 “(A) DESIGN-BASED STANDARDS.—

24 “(i) BUILDINGS WITHIN THE SCOPE
 25 OF STANDARD 90.1–2007.—If the building

1 is within the scope of Standard 90.1–2007,
2 the designed reduction in energy use shall
3 be determined using methods of calculation
4 under paragraph (3) in comparison to a
5 reference building which meets the min-
6 imum requirements of such standard.

7 “(ii) RESNET BUILDINGS.—If the
8 building is within the scope of RESNET,
9 the designed reduction in energy use shall
10 be determined using methods prescribed by
11 the Secretary which are based on the Resi-
12 dential Energy Services Network Technical
13 Guidelines.

14 “(iii) OTHER BUILDINGS.—If neither
15 clause (i) or (ii) apply to the building, the
16 designed reduction in energy use shall be
17 determined using methods of calculation
18 prescribed by the Secretary in a manner
19 which is consistent with principles under
20 paragraph (3).

21 “(B) MEASURED REDUCTIONS.—

22 “(i) IN GENERAL.—In the case of
23 buildings which meet the requirements of
24 clause (ii), the taxpayer may determine the
25 reduction in energy usage by comparing

1 the energy usage during the period selected
2 by the taxpayer under clause (ii)(I) with
3 the energy usage during the period selected
4 by the taxpayer under clause (ii)(II).

5 “(ii) BUILDING REQUIREMENTS.—A
6 building meets the requirements of this
7 clause if—

8 “(I) the building is at least 75
9 percent occupied during any period
10 (but not less than 12 months) selected
11 by the taxpayer which ends during the
12 5-year period ending on the date that
13 the rehabilitation begins, and

14 “(II) the building is at least 75
15 percent occupied during the com-
16 parable period selected by the tax-
17 payer which begins during the 5-year
18 period beginning on the date that the
19 rehabilitation is completed.

20 “(iii) ENERGY STAR BUILDINGS.—The
21 reduction in energy use for buildings with-
22 in the scope of Energy Start Portfolio
23 Manager may be determined for purposes
24 of this subparagraph by using the Energy

1 Star Portfolio Manager Buildings Bench-
2 mark Tool.

3 “(iv) SPECIAL RULES.—The Secretary
4 shall prescribe regulations which preclude
5 the use of this subparagraph, or modify
6 the methods otherwise applicable under
7 this subparagraph, in circumstance where
8 vacancies, changes in use, and other fac-
9 tors which might otherwise yield in materi-
10 ally misleading results.

11 “(v) YEAR CREDIT ALLOWABLE.—In
12 the case of a building which is a qualified
13 energy efficient rehabilitated building sole-
14 ly by reason of this subparagraph, the in-
15 crease in the credit under subsection (a)(3)
16 with respect to such building shall be
17 taken into account for the taxable year
18 which includes the end of the period se-
19 lected by the taxpayer under clause (ii)(II)
20 in lieu of the taxable year in which the re-
21 habilitated building is placed in service.

22 “(3) METHODS OF CALCULATIONS.—

23 “(A) IN GENERAL.—The Secretary, after
24 consultation with the Secretary of Energy, shall
25 promulgate regulations which describe in detail

1 methods for calculating and verifying energy
2 and power consumption and cost, based on Ap-
3 pendix G of Standard 90.1–2007 (or any subse-
4 quent version of such Appendix which is in ef-
5 fect at the time of the certification).

6 “(B) COMPUTER SOFTWARE.—

7 “(i) IN GENERAL.—Any calculation
8 under subparagraph (A) shall be prepared
9 by qualified computer software.

10 “(ii) QUALIFIED COMPUTER SOFT-
11 WARE.—For purposes of subparagraph
12 (A), the term ‘qualified computer software’
13 means software—

14 “(I) which is included (at the
15 time of the certification) on the pub-
16 lished list of qualified software by the
17 Department of Energy, and

18 “(II) which provides such infor-
19 mation as the Secretary may require,
20 including information that allows the
21 user to document the energy efficiency
22 features of the building and its pro-
23 jected annual energy costs, and

24 “(III) which provides standard-
25 ized outputs for building energy per-

1 formance and, to the maximum extent
2 practicable, relies on industry best
3 practices and existing guidelines.

4 “(4) CERTIFICATIONS.—

5 “(A) IN GENERAL.—The Secretary shall
6 prescribe the manner and method for the mak-
7 ing of certifications under this subsection.

8 “(B) PROCEDURES.—The Secretary shall
9 include as part of the certification process pro-
10 cedures for inspection and testing by qualified
11 individuals described in subparagraph (C) to
12 ensure compliance of buildings with energy-sav-
13 ings plans and targets. Such procedures shall
14 be comparable, given the difference between
15 commercial and residential buildings, to the re-
16 quirements in the Mortgage Industry National
17 Accreditation Procedures for Home Energy
18 Rating Systems.

19 “(C) QUALIFIED INDIVIDUALS.—Individ-
20 uals qualified to determine compliance shall be
21 only those individuals who are recognized by an
22 organization certified by the Secretary for such
23 purposes. For purposes of the preceding sen-
24 tence, an individual shall not be qualified with
25 respect to a building unless the individual is—

- 1 “(i) a registered professional engineer,
2 “(ii) not a direct employee of the
3 owner of the commercial building or multi-
4 family building, and
5 “(iii) licensed in the State in which
6 such building is located.

7 “(5) STANDARD 90.1–2007.—For purposes of
8 this subsection, the term ‘Standard 90.1–2007’
9 means Standard 90.1–2007 of the American Society
10 of Heating, Refrigerating, and Air Conditioning En-
11 gineers and the Illuminating Engineering Society of
12 North America (or any subsequent version of such
13 Standard which is in effect at the time of the certifi-
14 cation).

15 “(6) ALLOCATION OF CREDIT FOR TAX-EXEMPT
16 PROPERTY.—Paragraphs (3) and (4) of section
17 50(b), and clause (v) of subsection (c)(2)(B), shall
18 not apply to those qualified rehabilitation expendi-
19 tures that are taken into account for purposes of
20 certifying a building as a qualified energy efficient
21 rehabilitated building under this subsection. Any re-
22 habilitation credit which is allowable by reason of
23 the preceding sentence may be assigned to any other
24 person, and such other person shall be treated as the
25 taxpayer with respect thereto.

1 “(7) COORDINATION.—The Secretary shall des-
 2 ignate processes for tracking the numbers and loca-
 3 tions of buildings claiming the rehabilitation by rea-
 4 son of this subsection, as well as providing informa-
 5 tion on projected and actual savings of energy and
 6 its value over time in coordination with the Depart-
 7 ment of Energy.

8 “(8) REGULATIONS.—The Secretary, after con-
 9 sultation with the Administrator of the Environ-
 10 mental Protection Agency and the Secretary of the
 11 Interior, shall promulgate such regulations as may
 12 be necessary or appropriate to carry out the pur-
 13 poses of this subsection, including regulations—

14 “(A) to take into account new technologies
 15 regarding energy efficiency and renewable en-
 16 ergy for purposes of determining energy effi-
 17 ciency and savings under this subsection, and

18 “(B) to provide for a recapture of the cred-
 19 it determined under this subsection if the de-
 20 sign referred to in paragraph (1)(B) is not fully
 21 implemented.”.

22 (c) SUBSTANTIAL REHABILITATION REQUIREMENT
 23 NOT TO APPLY TO ENERGY EFFICIENCY SUPPLEMENT.—
 24 Subparagraph (A) of section 47(c)(1) of such Code (defin-

ing qualified rehabilitated building) is amended by adding
at the end the following new flush sentence:

“Clause (i) shall not apply to so much of the
rehabilitation credit as is determined under sub-
section (a)(3).”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall apply to property placed in service after the
date of the enactment of this Act.

(2) WAIVER OF SUBSTANTIAL REHABILITATION
REQUIREMENT.—The waiver of the requirement of
section 47(c)(1)(A)(i) of the Internal Revenue Code
of 1986 made by section 47(f)(1)(A) of such Code,
as added by this Act, shall apply with respect to re-
habilitations the physical work on which begins after
the date of the enactment of this Act.

**SEC. 4. MODIFICATION TO DEFINITION OF QUALIFIED RE-
HABILITATION EXPENDITURE.**

(a) IN GENERAL.—Clause (i) of section 47(c)(2)(A)
of the Internal Revenue Code of 1986 (relating to the defi-
nition of qualified rehabilitation expenditures) is amended
by striking “or” at the end of subclause (III), by striking
subclause (IV), and by inserting after subclause (III) the
following new subclauses:

1 “(IV) rehabilitated building en-
2 ergy efficiency property, or

3 “(V) an addition or improvement
4 to property described in subclause (I),
5 (II), (III), or (IV), and”.

6 (b) REHABILITATED BUILDING ENERGY EFFICIENCY
7 PROPERTY.—Section 47(c)(2) of such Code is amended by
8 adding at the end the following new subparagraph:

9 “(E) REHABILITATED BUILDING ENERGY
10 EFFICIENCY PROPERTY.—

11 “(i) IN GENERAL.—For purposes of
12 subparagraph (A), the term ‘rehabilitated
13 building energy efficiency property’ means
14 property which is certified as being—

15 “(I) affixed to, adjacent to, or in-
16 tegral to the provision of renewable
17 energy to a qualified rehabilitated
18 building, or

19 “(II) installed as part of a plan
20 designed to achieve any energy use re-
21 duction (within the meaning of sub-
22 section (f)).

23 Subparagraph (B)(i) shall not apply to re-
24 habilitated building energy efficiency prop-
25 erty.

1 “(ii) CERTIFICATION.—The Secretary
 2 shall prescribe the manner and method for
 3 the making of certifications under clause
 4 (i).”.

5 (c) ENLARGEMENTS.—Clause (iii) of section
 6 47(c)(2)(B) of such Code is amended by adding at the
 7 end the following new sentence: “The preceding sentence
 8 shall not apply to any rehabilitated building energy effi-
 9 ciency property which is an addition or improvement to
 10 a building.”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to qualified rehabilitated buildings
 13 placed in service after the date of the enactment of this
 14 Act.

15 **SEC. 5. COORDINATION OF ENERGY CREDIT WITH REHA-**
 16 **BILITATION CREDIT.**

17 (a) IN GENERAL.—Paragraph (2) of section 48(a) of
 18 the Internal Revenue Code of 1986 is amended by striking
 19 subparagraph (B).

20 (b) CONFORMING AMENDMENTS.—Paragraph (2) of
 21 section 48(a) of such Code is amended—

22 (1) by redesignating subparagraph (A)(ii) as
 23 subparagraph (B) and moving such subparagraph 2
 24 ems to the left,

1 (2) by redesignating subclauses (I) through
 2 (IV) of subparagraph (A)(i) as clauses (i) through
 3 (iv), respectively, and by moving such clauses 2 ems
 4 to the left, and

5 (3) by striking so much of such paragraph as
 6 precedes “30 percent in the case of—” and inserting
 7 the following:

8 “(2) ENERGY PERCENTAGE.—The energy per-
 9 centage is—

10 “(A) 30 percent in the case of—”.

11 (c) BASIS REDUCTION.—Paragraph (3) of section
 12 50(c) of such Code is amended by adding at the end the
 13 following new flush sentence: “In the case of property that
 14 qualifies for both the energy credit and the rehabilitation
 15 credit, the preceding sentence shall be applied by sub-
 16 stituting ‘none’ for ‘only 50 percent’ each place it ap-
 17 pears.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to property placed in service after
 20 the date of the enactment of this Act.

21 **SEC. 6. DATE BY WHICH BUILDING MUST BE FIRST PLACED**
 22 **IN SERVICE.**

23 (a) IN GENERAL.—Subparagraph (B) of section
 24 47(c)(1) of the Internal Revenue Code of 1986 (relating

1 to the date by which building must be first placed in serv-
 2 ice) is amended—

3 (1) by striking “BUILDING MUST BE FIRST
 4 PLACED IN SERVICE BEFORE 1936” and inserting
 5 “DATE BY WHICH BUILDING MUST FIRST BE
 6 PLACED IN SERVICE”, and

7 (2) by striking “before 1936” and inserting “no
 8 less than 50 years prior to the year in which quali-
 9 fied rehabilitation expenditures are taken into ac-
 10 count under subsection (b)(1)”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to property placed in service after
 13 the date of the enactment of this Act.

14 **SEC. 7. MODIFICATIONS REGARDING CERTAIN TAX-EXEMPT**
 15 **USE PROPERTY.**

16 (a) IN GENERAL.—Clause (I) of section
 17 47(c)(2)(B)(v) of the Internal Revenue Code of 1986 (re-
 18 lating to tax-exempt use property) is amended by inserting
 19 “and subclauses (I), (II), and (III) of section
 20 168(h)(1)(B)(ii) shall not apply” after “thereof”.

21 (b) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to property placed in service after
 23 the date of the enactment of this Act.

1 **SEC. 8. SPECIAL RULES FOR DISPOSITIONS OF STATE HIS-**
 2 **TORIC TAX CREDITS.**

3 (a) IN GENERAL.—Part III of subchapter B of chap-
 4 ter 1 of the Internal Revenue Code of 1986 (relating to
 5 items specifically excluded from gross income) is amended
 6 by inserting after section 139D the following new section:

7 **“SEC. 139E. DISPOSITIONS OF STATE HISTORIC TAX CRED-**
 8 **ITS.**

9 “(a) EXCLUSION FROM INCOME; BASIS REDUC-
 10 TION.—

11 “(1) IN GENERAL.—In the case of a taxpayer
 12 who receives a State historic tax credit and transfers
 13 such credit by sale, allocation, or otherwise, or re-
 14 ceives a refund of all or a portion of such credit—

15 “(A) no portion of the net proceeds of such
 16 allocation, disposition, or refund of such credit
 17 shall constitute income to such taxpayer under
 18 section 61(a), and

19 “(B) the taxpayer’s basis in the property
 20 with respect to which the State historic tax
 21 credit is allowed shall be reduced as determined
 22 under paragraph (2).

23 “(2) DETERMINATION OF REDUCTION IN
 24 BASIS.—The reduction in basis under paragraph (1)
 25 shall be applied—

26 “(A) first, against the basis in the land,

1 “(B) second, against so much of the basis
 2 of any building or interest therein as was not
 3 treated as a qualified rehabilitation expenditure
 4 by reason of clause (ii) or (iii) of section
 5 47(c)(2)(B), and

6 “(C) third, against the remaining basis in
 7 the property.

8 “(D) ADJUSTMENT IN BASIS OF INTEREST
 9 IN PARTNERSHIP OR S CORPORATION.—The ad-
 10 justed basis of—

11 “(i) a partner’s interest in a partner-
 12 ship, or

13 “(ii) stock in an S corporation (as de-
 14 fined in section 1361(a)(1)),

15 shall be appropriately adjusted to take into ac-
 16 count adjustments made under this subsection
 17 in the basis of property held by the partnership
 18 or S corporation (if any).

19 “(b) ELECTION TO INCLUDE IN INCOME.—

20 “(1) IN GENERAL.—In the case of a taxpayer
 21 elects to have this subsection apply—

22 “(A) the net proceeds of the allocation, dis-
 23 position, or refund described in subsection (a)
 24 received by such taxpayer shall constitute in-
 25 come to such taxpayer under section 61(a), and

1 “(B) subsection (a)(1)(B) shall not apply.

2 “(2) MAKING OF ELECTION.—An election under
3 this subsection shall be made at such time and in
4 such manner as the Secretary of the Treasury may
5 by regulation prescribe. Such election shall apply for
6 the taxable year for which it is made and for all sub-
7 sequent taxable years and may be revoked only with
8 the consent of the Secretary of the Treasury.

9 “(c) EFFECT ON QUALIFIED REHABILITATION EX-
10 PENDITURES AND REHABILITATION CREDITS.—For pur-
11 poses of determining the rehabilitation credit allowable to
12 a taxpayer under section 47, the transfer or allocation of
13 State historic tax credits with respect to any property by
14 a taxpayer shall not affect or reduce the amount of quali-
15 fied rehabilitation expenditures (as defined in section
16 47(c)(2)) incurred in connection with such property, nor
17 shall such transfer or disposition, nor any basis adjust-
18 ments under subsection (a), be treated as an early disposi-
19 tion of investment credit property for purposes of the re-
20 capture provisions of section 50.

21 “(d) STATE HISTORIC TAX CREDITS DEFINED.—For
22 purposes of this section, the term ‘State historic tax credit’
23 means any credit against State or local tax liabilities
24 which—

1 “(1) is allowable under the laws of any State or
 2 political subdivision thereof to a taxpayer with re-
 3 spect to expenditures made for the rehabilitation of
 4 property identified by such laws, and

5 “(2) can be allocated, disposed, or refunded
 6 under such laws.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 for such part III is amended by inserting after the item
 9 relating to section 139D the following new item:

 “Sec. 139E. Dispositions of State historic tax credits.”.

10 (c) EFFECTIVE DATE.—This section shall apply to
 11 transfers or dispositions made, or refunds received, after
 12 the date of the enactment of this Act.

○