

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.

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

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

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 paragraph (4) as para-
 8 graph (5) and by inserting after paragraph (3) the
 9 following new paragraph:

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

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

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

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

19 “(B) LIMITATION.—In the case of energy-
 20 efficient building property placed in service dur-
 21 ing the taxable year, the credit determined
 22 under paragraph (1) for such year with respect
 23 to such property shall not exceed an amount
 24 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

1 (as the case may be) made during such cal-
2 endar year by any of such individuals with re-
3 spect to such dwelling unit shall be determined
4 by treating all of such individuals as 1 taxpayer
5 whose taxable year is such calendar year.

6 “(B) There shall be allowable, with respect
7 to such expenditures to each of such individ-
8 uals, a credit under subsection (a) for the tax-
9 able year in which such calendar year ends in
10 an amount which bears the same ratio to the
11 amount determined under subparagraph (A) as
12 the amount of such expenditures made by such
13 individual during such calendar year bears to
14 the aggregate of such expenditures made by all
15 of such individuals during such calendar year.

16 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
17 HOUSING CORPORATION.—In the case of an indi-
18 vidual who is a tenant-stockholder (as defined in sec-
19 tion 216) in a cooperative housing corporation (as
20 defined in such section), such individual shall be
21 treated as having made his tenant-stockholder’s pro-
22 portionate share (as defined in section 216(b)(3)) of
23 any expenditures of such corporation.

24 “(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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