

107TH CONGRESS  
1ST SESSION

# S. 1709

To amend the Internal Revenue Code of 1986 to provide incentives to introduce new technologies to reduce energy consumption in buildings.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2001

Mr. SMITH of New Hampshire (for himself and Mrs. FEINSTEIN) 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 provide incentives to introduce new technologies to reduce energy consumption in buildings.

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. INCENTIVE FOR CERTAIN ENERGY EFFICIENT**  
4 **PROPERTY USED IN BUSINESS.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-  
6 ter 1 of the Internal Revenue Code of 1986 is amended  
7 by adding at the end the following new section:

1 **“SEC. 199. ENERGY PROPERTY DEDUCTION.**

2       “(a) IN GENERAL.—There shall be allowed as a de-  
3 duction for the taxable year an amount equal to the energy  
4 efficient residential rental building property expenditures  
5 made by a taxpayer for the taxable year.

6       “(b) LIMITATIONS.—

7           “(1) MAXIMUM AMOUNT OF DEDUCTION.—The  
8 amount of energy efficient residential rental building  
9 property expenditures taken into account under sub-  
10 section (a) with respect to each dwelling unit shall  
11 not exceed the amount specified in the following  
12 table:

<b>“In the case of:</b>	<b>Deduction amount:</b>
30 percent property .....	\$1,500
50 percent property .....	\$4,000.

13           “(2) YEAR DEDUCTION ALLOWED.—The deduc-  
14 tion under subsection (a) shall be allowed in the tax-  
15 able year in which the construction, reconstruction,  
16 or repair of the property is completed.

17       “(c) ENERGY EFFICIENT RESIDENTIAL RENTAL  
18 BUILDING PROPERTY EXPENDITURES.—For purposes of  
19 this section—

20           “(1) IN GENERAL.—The term ‘energy efficient  
21 residential rental building property expenditures’  
22 means an amount paid or incurred in connection

1 with construction, reconstruction, or repair of energy  
2 efficient residential rental building property—

3 “(A) for which depreciation is allowable  
4 under section 167,

5 “(B) which is located in the United States,  
6 and

7 “(C) the construction, reconstruction, or  
8 repair of which is completed by the taxpayer.

9 Such term includes expenditures for labor costs  
10 properly allocable to the onsite preparation, assem-  
11 bly, or original installation of the property.

12 “(2) ENERGY EFFICIENT RESIDENTIAL RENTAL  
13 BUILDING PROPERTY.—

14 “(A) IN GENERAL.—The term ‘energy effi-  
15 cient residential rental building property’ means  
16 any property which reduces total annual energy  
17 and power costs with respect to heating and  
18 cooling of the building by 50 percent or more  
19 in the case of 50 percent property or 30 percent  
20 or more in the case of 30 percent property in  
21 comparison to the projected energy cost of such  
22 property without such expenditures. Such com-  
23 parison shall be made using the procedures  
24 under subparagraph (B).

25 “(B) PROCEDURES.—

1           “(i) IN GENERAL.—For purposes of  
2           subparagraph (A), energy usage and costs  
3           shall be demonstrated either by a compo-  
4           nent-based approach or a performance-  
5           based approach.

6           “(ii) COMPONENT APPROACH.—Com-  
7           ponent approach compliance shall be dem-  
8           onstrated if all of the components of the  
9           dwelling unit comply with the requirements  
10          of prescriptive packages established by the  
11          Secretary of Energy, in consultation with  
12          the Administrator of the Environmental  
13          Protection Agency, such that the majority  
14          of the buildings which use such approach  
15          achieve energy cost reductions equivalent  
16          to the results of using the performance-  
17          based approach under clause (iii).

18          “(iii) PERFORMANCE-BASED AP-  
19          PROACH.—Performance-based compliance  
20          shall be demonstrated if the 30 percent or  
21          50 percent energy cost savings for heating  
22          and cooling, as applicable, are met with re-  
23          spect to a dwelling unit when compared to  
24          the original condition of the dwelling unit.

1           “(iv) COMPUTER SOFTWARE.—Com-  
2           puter software shall be used in support of  
3           performance-based compliance under  
4           clause (iii) and such software shall meet all  
5           of the procedures and methods for calcu-  
6           lating energy savings reductions that are  
7           promulgated by the Secretary of Energy.  
8           Such regulations on the specifications for  
9           software and verification protocols shall be  
10          based on the 2001 California Residential  
11          Alternative Calculation Method Approval  
12          Manual.

13           “(v) CALCULATION REQUIREMENTS.—  
14          In calculating tradeoffs and energy per-  
15          formance, the regulations prescribed under  
16          this subparagraph shall prescribe for the  
17          taxable year the costs per unit of energy  
18          and power, such as kilowatt hour, kilowatt,  
19          gallon of fuel oil, and cubic foot or Btu of  
20          natural gas, which may be dependent on  
21          time of usage. Such costs shall be based on  
22          average current and future costs to the  
23          consumer.

24           “(vi) APPROVAL OF SOFTWARE SUB-  
25          MISSIONS.—The Secretary shall approve

1 software submissions that comply with the  
2 requirements of clause (iv).

3 “(vii) PROCEDURES FOR INSPECTION  
4 AND TESTING OF HOMES.—The Secretary  
5 shall ensure that procedures for the inspec-  
6 tion and testing for compliance comply  
7 with the calculation requirements under  
8 clause (iv).

9 “(C) DETERMINATIONS OF COMPLIANCE.—  
10 A determination of compliance with respect to  
11 energy efficient residential rental building prop-  
12 erty made for the purposes of this paragraph  
13 shall be filed with the Secretary not later than  
14 1 year after the date of such determination and  
15 shall include the TIN of the certifier, the ad-  
16 dress of the building in compliance, and the  
17 identity of the person for whom such deter-  
18 mination was performed. Determinations of  
19 compliance filed with the Secretary shall be  
20 available for inspection by the Secretary of En-  
21 ergy.

22 “(D) COMPLIANCE.—

23 “(i) IN GENERAL.—The Secretary, in  
24 consultation with the Secretary of Energy  
25 shall establish requirements for certifi-

1 cation and compliance procedures after ex-  
2 amining the requirements for energy con-  
3 sultants and home energy ratings providers  
4 specified by the Mortgage Industry Na-  
5 tional Accreditation Procedures for Home  
6 Energy Rating Systems.

7 “(ii) INDIVIDUALS QUALIFIED TO DE-  
8 TERMINE COMPLIANCE.—Individuals quali-  
9 fied to determine compliance shall be only  
10 those individuals who are recognized by an  
11 organization certified by the Secretary for  
12 such purposes. The Secretary may qualify  
13 a Home Energy Rating Systems Organiza-  
14 tion, a local building code agency, a State  
15 or local energy office, a utility, or other or-  
16 ganizations which meet the requirements  
17 prescribed under this section.

18 “(4) ALLOCATION OF DEDUCTION FOR PUBLIC  
19 PROPERTY.—In the case of energy efficient residen-  
20 tial rental building property which is public prop-  
21 erty, the Secretary shall promulgate a regulation to  
22 allow the allocation of the deduction to the person  
23 primarily responsible for designing the improvements  
24 to the property in lieu of the public entity which is  
25 the owner of such property. Such person shall be

1 treated as the taxpayer for purposes of this sub-  
2 section.

3 “(d) BASIS REDUCTION.—For purposes of this sub-  
4 title, if a deduction is allowed under this section with re-  
5 spect to any property, the basis of such property shall be  
6 reduced by the amount of the deduction so allowed.

7 “(e) REGULATIONS.—The Secretary shall promulgate  
8 such regulations as necessary to take into account new  
9 technologies regarding energy efficiency and renewable en-  
10 ergy for purposes of determining energy efficiency and  
11 savings under this section.

12 “(f) TERMINATION.—This section shall not apply  
13 with respect to any property placed in service, or construc-  
14 tion, reconstruction, repair, or erection completed, after  
15 December 31, 2007.”.

16 (b) CONFORMING AMENDMENT.—Section 1016(a) of  
17 the Internal Revenue Code of 1986 is amended by striking  
18 “and” at the end of paragraph (26), by striking the period  
19 at the end of paragraph (27) and inserting “, and”, and  
20 by inserting the following new paragraph:

21 “(28) for amounts allowed as a deduction under  
22 section 199(a).”.

23 (c) CLERICAL AMENDMENT.—The table of sections  
24 for part VI of subchapter B of chapter 1 of the Internal

1 Revenue Code of 1986 is amended by adding at the end  
2 the following new item:

“Sec. 199. Energy property deduction.”.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Department of  
5 Energy out of amounts not already appropriated such  
6 sums as necessary to carry out this section.

7 (e) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to property placed in service, or  
9 construction, reconstruction, repair, or erection completed,  
10 in taxable years beginning after December 31, 2001.

11 **SEC. 2. CREDIT FOR CERTAIN NONBUSINESS ENERGY**  
12 **PROPERTY.**

13 (a) IN GENERAL.—Subpart A of part IV of sub-  
14 chapter A of chapter 1 of the Internal Revenue Code of  
15 1986 (relating to nonrefundable personal credits) is  
16 amended by inserting after section 25B the following new  
17 section:

18 **“SEC. 25C. HIGHLY ENERGY-EFFICIENT NONBUSINESS EN-**  
19 **ERGY PROPERTY.**

20 “(a) ALLOWANCE OF CREDIT.—

21 “(1) IN GENERAL.—In the case of an indi-  
22 vidual, there shall be allowed as a credit against the  
23 tax imposed by this chapter for the taxable year an  
24 amount equal to the amount of residential energy

1 property expenditures made by the taxpayer for the  
 2 taxable year.

3 “(2) LIMITATION.—The credit allowed under  
 4 paragraph (1) with respect to a residence of a tax-  
 5 payer shall not exceed the amount specified in the  
 6 following table:

<b>Highly energy-efficient property:</b>	<b>Credit amount:</b>
30 percent property .....	\$500
50 percent property .....	\$1,250.

7 “(3) YEAR CREDIT ALLOWED.—The credit  
 8 under paragraph (1) shall be allowed for the taxable  
 9 year in which the principal residence of the taxpayer  
 10 is certified as 50 percent property or 30 percent  
 11 property.

12 “(b) DEFINITIONS.—For purposes of this section—

13 “(1) RESIDENTIAL ENERGY PROPERTY EX-  
 14 PENDITURES.—The term ‘residential energy prop-  
 15 erty expenditures’ means expenditures made by the  
 16 taxpayer in connection with the construction, recon-  
 17 struction, or repair of a dwelling unit of the tax-  
 18 payer which results in the unit being a highly en-  
 19 ergy-efficient principal residence. Such term includes  
 20 expenditures for labor costs properly allocable to the  
 21 onsite preparation, assembly, or original installation  
 22 of the property.

23 “(2) HIGHLY ENERGY-EFFICIENT PRINCIPAL  
 24 RESIDENCE.—

1           “(A) IN GENERAL.—Property is a highly  
2 energy-efficient principal residence if—

3           “(i) such property is located in the  
4 United States,

5           “(ii) the property is the principal resi-  
6 dence of the taxpayer, and

7           “(iii) such property is certified as  
8 being 50 percent property or 30 percent  
9 property.

10          “(B) 50 OR 30 PERCENT PROPERTY.—

11           “(i) IN GENERAL.—For purposes of  
12 subparagraph (A), property is 50 percent  
13 property or 30 percent property if the pro-  
14 jected heating and cooling energy cost of  
15 such property, measured in terms of aver-  
16 age annual energy cost to taxpayer, is re-  
17 duced by 50 percent, or 30 percent, respec-  
18 tively, in comparison to the energy cost of  
19 such property if expenditures made by the  
20 taxpayer with respect to energy efficient  
21 improvements to such property were not  
22 made. Such comparison shall be deter-  
23 mined using the procedures under clause  
24 (ii).

25           “(ii) PROCEDURES.—

1           “(I) IN GENERAL.—For purposes  
2 of clause (i), energy usage shall be  
3 demonstrated either by a component-  
4 based approach or a performance-  
5 based approach.

6           “(II) COMPONENT APPROACH.—  
7 Component approach compliance shall  
8 be demonstrated if all of the compo-  
9 nents of the property comply with the  
10 requirements of prescriptive packages  
11 established by the Secretary of En-  
12 ergy, in consultation with the Admin-  
13 istrator of the Environmental Protec-  
14 tion Agency, such that the majority of  
15 the buildings which use such approach  
16 achieve energy cost reductions equiva-  
17 lent to the results of using the per-  
18 formance-based approach under sub-  
19 clause (III).

20           “(III) PERFORMANCE-BASED AP-  
21 PROACH.—Performance-based compli-  
22 ance shall be demonstrated if the 30  
23 percent or 50 percent energy cost sav-  
24 ings for heating and cooling, as appli-  
25 cable, are met with respect to a dwell-

1 ing unit when compared to the origi-  
2 nal condition of the property.

3 “(IV) COMPUTER SOFTWARE.—

4 Computer software shall be used in  
5 support of performance-based compli-  
6 ance under subclause (III) and such  
7 software shall meet all of the proce-  
8 dures and methods for calculating en-  
9 ergy savings reductions that are pro-  
10 mulgated by the Secretary of Energy.  
11 Such regulations on the specifications  
12 for software and verification protocols  
13 shall be based on the 2001 California  
14 Residential Alternative Calculation  
15 Method Approval Manual.

16 “(3) PRINCIPAL RESIDENCE.—For purposes of  
17 this section—

18 “(A) IN GENERAL.—The term ‘principal  
19 residence’ has the same meaning as when used  
20 in section 121, except that—

21 “(i) no ownership requirement shall  
22 be imposed, and

23 “(ii) the period for which a building is  
24 treated as the principal residence of the  
25 taxpayer shall also include the 60-day pe-

1           riod ending on the 1st day on which it  
2           would (but for this subparagraph) first be  
3           treated as a principal residence.

4           “(B) MANUFACTURED HOUSING.—The  
5           term ‘residence’ shall include a dwelling unit  
6           which is manufactured housing.

7           “(c) SPECIAL RULES.—For purposes of this  
8           section—

9           “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-  
10          CUPANCY.—In the case of any dwelling unit which if  
11          jointly occupied and used during any calendar year  
12          as a residence by 2 or more individuals the following  
13          rules shall apply:

14                 “(A) The amount of the credit allowable  
15                 under subsection (a) by reason of expenditures  
16                 made during such calendar year by any of such  
17                 individuals with respect to such dwelling unit  
18                 shall be determined by treating all of such indi-  
19                 viduals as 1 taxpayer whose taxable year is  
20                 such calendar year.

21                 “(B) There shall be allowable with respect  
22                 to such expenditures to each of such individ-  
23                 uals, a credit under subsection (a) for the tax-  
24                 able year in which such calendar year ends in  
25                 an amount which bears the same ratio to the

1 amount determined under subparagraph (A) as  
2 the amount of such expenditures made by such  
3 individual during such calendar year bears to  
4 the aggregate of such expenditures made by all  
5 of such individuals during such calendar year.

6 “(2) TENANT-STOCKHOLDER IN COOPERATIVE  
7 HOUSING CORPORATION.—In the case of an indi-  
8 vidual who is a tenant-stockholder (as defined in sec-  
9 tion 216) in a cooperative housing corporation (as  
10 defined in such section), such individual shall be  
11 treated as having made his tenant-stockholder’s pro-  
12 portionate share (as defined in section 216(b)(3)) of  
13 any expenditures of such corporation and such credit  
14 shall be allocated pro rata to such individual.

15 “(3) CONDOMINIUMS.—

16 “(A) IN GENERAL.—In the case of an indi-  
17 vidual who is a member of a condominium man-  
18 agement association with respect to a condo-  
19 minium which he owns, such individual shall be  
20 treated as having made his proportionate share  
21 of any expenditures of such association and any  
22 credit shall be allocated appropriately.

23 “(B) CONDOMINIUM MANAGEMENT ASSO-  
24 CIATION.—For purposes of this paragraph, the  
25 term ‘condominium management association’

1 means an organization which meets the require-  
2 ments of paragraph (1) of section 528(c) (other  
3 than subparagraph (E) thereof) with respect to  
4 a condominium project substantially all of the  
5 units of which are used as residences.

6 “(4) JOINT OWNERSHIP OF ENERGY ITEMS.—

7 “(A) IN GENERAL.—Any expenditure oth-  
8 erwise qualifying as a residential energy prop-  
9 erty expenditure shall not be treated as failing  
10 to so qualify merely because such expenditure  
11 was made with respect to 2 or more dwelling  
12 units.

13 “(B) LIMITS APPLIED SEPARATELY.—In  
14 the case of any expenditure described in sub-  
15 paragraph (A), the amount of the credit allow-  
16 able under subsection (a) shall (subject to para-  
17 graph (1)) be computed separately with respect  
18 to the amount of the expenditure made for each  
19 dwelling unit.

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

1           “(6) PROPERTY FINANCED BY SUBSIDIZED EN-  
2           ERGY FINANCING.—

3           “(A) REDUCTION OF EXPENDITURES.—

4           “(i) IN GENERAL.—Except as pro-  
5           vided in subparagraph (B), for purposes of  
6           determining the amount of residential en-  
7           ergy property expenditures made by any  
8           individual with respect to any dwelling  
9           unit, there shall not be taken into account  
10          expenditures which are made from sub-  
11          sidized energy financing.

12          “(ii) SUBSIDIZED ENERGY FINANC-  
13          ING.—For purposes of clause (i), the term  
14          ‘subsidized energy financing’ has the same  
15          meaning given such term in section  
16          48(a)(4)(C).

17          “(B) EXCEPTION FOR STATE PROGRAMS.—

18          Subparagraph (A) shall not apply to expendi-  
19          tures made with respect to property for which  
20          the taxpayer has received a loan, State tax  
21          credit, or grant under any State energy pro-  
22          gram.

23          “(d) BASIS ADJUSTMENTS.—For purposes of this  
24          subtitle, if a credit is allowed under this section for any  
25          expenditure with respect to any property, the increase in

1 the basis of such property which would (but for this sub-  
2 section) result from such expenditure shall be reduced by  
3 the amount of the credit so allowed.

4 “(e) REGULATIONS.—The Secretary shall promulgate  
5 such regulations as necessary to take into account new  
6 technologies regarding energy efficiency and renewable en-  
7 ergy for purposes of determining energy efficiency and  
8 savings under this section.

9 “(f) TERMINATION.—This section shall not apply  
10 with respect to any taxable years beginning after Decem-  
11 ber 31, 2007.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Subsection (a) of section 1016 of the Inter-  
14 nal Revenue Code of 1986 as amended by section  
15 1(b), is amended by striking “and” at the end of  
16 paragraph (27), by striking the period at the end of  
17 paragraph (28) and inserting “, and”, and by add-  
18 ing at the end the following new paragraph:

19 “(29) to the extent provided in section 25C(e),  
20 in the case of amounts with respect to which a credit  
21 has been allowed under section 25C.”.

22 (2) The table of sections for subpart A of part  
23 IV of subchapter A of chapter 1 of such Code is  
24 amended by inserting after the item relating to sec-  
25 tion 25B the following new item:

“Sec. 25C. Nonbusiness energy property.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to expenditures made after Decem-  
3 ber 31, 2001.

○