

108TH CONGRESS
1ST SESSION

H. R. 388

To amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. SHADEGG introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide tax credits for Indian investment and employment, 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 “Indian Reservation
5 Jobs and Investment Act of 2003”.

6 **SEC. 2. CONSTITUTIONAL AUTHORITY.**

7 The Constitutional authority upon which this Act
8 rests is the power of Congress to lay and collect taxes and
9 to regulate commerce with foreign nations and among the

1 several States and with the Indian tribes, as set forth in
 2 section 8 of Article I of the United States Constitution.

3 **SEC. 3. INVESTMENT TAX CREDIT FOR PROPERTY ON IN-**
 4 **DIAN RESERVATIONS.**

5 (a) ALLOWANCE OF INDIAN RESERVATION CRED-
 6 IT.—Section 46 of the Internal Revenue Code of 1986 (re-
 7 lating to investment credits) is amended by striking “and”
 8 at the end of paragraph (2), by striking the period at the
 9 end of paragraph (3) and inserting “, and”, and by adding
 10 after paragraph (3) the following new paragraph:

11 “(4) the Indian reservation credit.”.

12 (b) AMOUNT OF INDIAN RESERVATION CREDIT.—

13 (1) IN GENERAL.—Section 48 of such Code (re-
 14 lating to the energy credit and the reforestation
 15 credit) is amended by adding after subsection (b)
 16 the following new subsection:

17 “(c) INDIAN RESERVATION CREDIT.—

18 “(1) IN GENERAL.—For purposes of section 46,
 19 the Indian reservation credit for any taxable year is
 20 the Indian reservation percentage of the qualified in-
 21 vestment in qualified Indian reservation property
 22 placed in service during such taxable year, deter-
 23 mined in accordance with the following table:

“In the case of qualified In- dian reservation property which is—	The Indian reservation percent- age is—	
Reservation personal property		10
New reservation construction property		15
Reservation infrastructure investment		15

1 “(2) QUALIFIED INVESTMENT IN QUALIFIED
2 INDIAN RESERVATION PROPERTY DEFINED.—For
3 purposes of this subpart—

4 “(A) IN GENERAL.—The term ‘qualified
5 Indian reservation property’ means property—

6 “(i) which is—

7 “(I) reservation personal prop-
8 erty;

9 “(II) new reservation construc-
10 tion property; or

11 “(III) reservation infrastructure
12 investment; and

13 “(ii) not acquired (directly or indi-
14 rectly) by the taxpayer from a person who
15 is related to the taxpayer (within the
16 meaning of section 465(b)(3)(C)).

17 The term ‘qualified Indian reservation property’
18 does not include any property (or any portion
19 thereof) placed in service for purposes of con-
20 ducting or housing class I, II, or III gaming (as
21 defined in section 4 of the Indian Gaming Reg-
22 ulatory Act (25 U.S.C. 2703)).

23 “(B) QUALIFIED INVESTMENT.—The term
24 ‘qualified investment’ means—

1 “(i) in the case of reservation infra-
2 structure investment, the amount expended
3 by the taxpayer for the acquisition or con-
4 struction of the reservation infrastructure
5 investment; and

6 “(ii) in the case of all other qualified
7 Indian reservation property, the taxpayer’s
8 basis for such property.

9 “(C) RESERVATION PERSONAL PROP-
10 PERTY.—The term ‘reservation personal prop-
11 erty’ means qualified personal property which is
12 used by the taxpayer predominantly in the ac-
13 tive conduct of a trade or business within an
14 Indian reservation. Property shall not be treat-
15 ed as ‘reservation personal property’ if it is
16 used or located outside the Indian reservation
17 on a regular basis.

18 “(D) QUALIFIED PERSONAL PROPERTY.—
19 The term ‘qualified personal property’ means
20 property—

21 “(i) for which depreciation is allow-
22 able under section 168;

23 “(ii) which is not—

24 “(I) nonresidential real property;

1 “(II) residential rental property;

2 or

3 “(III) real property which is not
4 described in subclause (I) or (II) and
5 which has a class life of more than
6 12.5 years.

7 For purposes of this subparagraph, the
8 terms ‘nonresidential real property’, ‘resi-
9 dential rental property’, and ‘class life’
10 have the respective meanings given such
11 terms by section 168.

12 “(E) NEW RESERVATION CONSTRUCTION
13 PROPERTY.—The term ‘new reservation con-
14 struction property’ means qualified real prop-
15 erty—

16 “(i) which is located in an Indian res-
17 ervation;

18 “(ii) which is used by the taxpayer
19 predominantly in the active conduct of a
20 trade or business within an Indian reserva-
21 tion; and

22 “(iii) which is originally placed in
23 service by the taxpayer.

24 “(F) QUALIFIED REAL PROPERTY.—The
25 term ‘qualified real property’ means property

1 for which depreciation is allowable under sec-
2 tion 168 and which is described in subclause
3 (I), (II), or (III) of subparagraph (D)(ii).

4 “(G) RESERVATION INFRASTRUCTURE IN-
5 VESTMENT.—

6 “(i) IN GENERAL.—The term ‘reserva-
7 tion infrastructure investment’ means
8 qualified personal property or qualified real
9 property which—

10 “(I) benefits the tribal infrastruc-
11 ture;

12 “(II) is available to the general
13 public; and

14 “(III) is placed in service in con-
15 nection with the taxpayer’s active con-
16 duct of a trade or business within an
17 Indian reservation.

18 “(ii) PROPERTY MAY BE LOCATED
19 OUTSIDE THE RESERVATION.—Qualified
20 personal property and qualified real prop-
21 erty used or located outside an Indian res-
22 ervation shall be reservation infrastructure
23 investment only if its purpose is to connect
24 to existing tribal infrastructure in the res-
25 ervation, and shall include, but not be lim-

1 ited to, roads, power lines, water systems,
2 railroad spurs, and communications facili-
3 ties.

4 “(H) COORDINATION WITH OTHER CRED-
5 ITS.—The term ‘qualified Indian reservation
6 property’ shall not include any property with re-
7 spect to which the energy credit or the rehabili-
8 tation credit is allowed.

9 “(3) REAL ESTATE RENTALS.—For purposes of
10 this section, the rental to others of real property lo-
11 cated within an Indian reservation shall be treated
12 as the active conduct of a trade or business in an
13 Indian reservation.

14 “(4) INDIAN RESERVATION DEFINED.—For
15 purposes of this subpart, the term ‘Indian reserva-
16 tion’ means a reservation, as defined in—

17 “(A) section 3(d) of the Indian Financing
18 Act of 1974 (25 U.S.C. 1452(d)); or

19 “(B) section 4(10) of the Indian Child
20 Welfare Act of 1978 (25 U.S.C. 1903(10)).

21 “(5) LIMITATION BASED ON UNEMPLOY-
22 MENT.—

23 “(A) GENERAL RULE.—The Indian res-
24 ervation credit allowed under section 46 for any
25 taxable year shall equal—

1 “(i) if the Indian unemployment rate
2 on the applicable Indian reservation for
3 which the credit is sought exceeds 300 per-
4 cent of the national average unemployment
5 rate at any time during the calendar year
6 in which the property is placed in service
7 or during the immediately preceding 2 cal-
8 endar years, 100 percent of such credit;

9 “(ii) if such Indian unemployment
10 rate exceeds 150 percent but not 300 per-
11 cent, 50 percent of such credit; and

12 “(iii) if such Indian unemployment
13 rate does not exceed 150 percent, 0 per-
14 cent of such credit.

15 “(B) SPECIAL RULE FOR LARGE
16 PROJECTS.—In the case of a qualified Indian
17 reservation property which has (or is a compo-
18 nent of a project which has) a projected con-
19 struction period of more than 2 years or a cost
20 of more than \$1,000,000, subparagraph (A)
21 shall be applied by substituting ‘during the ear-
22 lier of the calendar year in which the taxpayer
23 enters into a binding agreement to make a
24 qualified investment or the first calendar year
25 in which the taxpayer has expended at least 10

1 percent of the taxpayer's qualified investment,
2 or the preceding calendar year' for 'during the
3 calendar year in which the property is placed
4 in service or during the immediately preceding
5 2 calendar years'.

6 “(C) DETERMINATION OF INDIAN UNEM-
7 PLOYMENT.—For purposes of this paragraph,
8 with respect to any Indian reservation, the In-
9 dian unemployment rate shall be based upon
10 Indians unemployed and able to work, and shall
11 be certified by the Secretary of the Interior.

12 “(6) COORDINATION WITH NONREVENUE
13 LAWS.—Any reference in this subsection to a provi-
14 sion not contained in this title shall be treated for
15 purposes of this subsection as a reference to such
16 provision as in effect on the date of the enactment
17 of this paragraph.”.

18 (2) LODGING TO QUALIFY.—Paragraph (2) of
19 section 50(b) of such Code (relating to property used
20 for lodging) is amended—

21 (A) by striking “and” at the end of sub-
22 paragraph (C);

23 (B) by striking the period at the end of
24 subparagraph (D) and inserting “; and”; and

1 (C) by adding at the end the following sub-
2 paragraph:

3 “(E) new reservation construction prop-
4 erty.”.

5 (c) RECAPTURE.—Subsection (a) of section 50 of
6 such Code (relating to recapture in case of dispositions,
7 etc.), is amended by adding at the end the following new
8 paragraph:

9 “(6) SPECIAL RULES FOR INDIAN RESERVATION
10 PROPERTY.—

11 “(A) IN GENERAL.—If, during any taxable
12 year, property with respect to which the tax-
13 payer claimed an Indian reservation credit—

14 “(i) is disposed of; or

15 “(ii) in the case of reservation per-
16 sonal property—

17 “(I) otherwise ceases to be in-
18 vestment credit property with respect
19 to the taxpayer; or

20 “(II) is removed from the Indian
21 reservation, converted, or otherwise
22 ceases to be Indian reservation prop-
23 erty,

1 the tax under this chapter for such taxable year
2 shall be increased by the amount described in
3 subparagraph (B).

4 “(B) AMOUNT OF INCREASE.—The in-
5 crease in tax under subparagraph (A) shall
6 equal the aggregate decrease in the credits al-
7 lowed under section 38 by reason of section
8 48(c) for all prior taxable years which would
9 have resulted had the qualified investment
10 taken into account with respect to the property
11 been limited to an amount which bears the
12 same ratio to the qualified investment with re-
13 spect to such property as the period such prop-
14 erty was held by the taxpayer bears to the ap-
15 plicable recovery period under section 168(g).

16 “(C) COORDINATION WITH OTHER RECAP-
17 TURE PROVISIONS.—In the case of property to
18 which this paragraph applies, paragraph (1)
19 shall not apply and the rules of paragraphs (3),
20 (4), and (5) shall apply.”

21 (d) BASIS ADJUSTMENT TO REFLECT INVESTMENT
22 CREDIT.—Paragraph (3) of section 50(c) of such Code
23 (relating to basis adjustment to investment credit prop-
24 erty) is amended by striking “energy credit or reforest-
25 ation credit” and inserting “energy credit, reforestation

1 credit, or Indian reservation credit other than with respect
2 to any expenditure for new reservation construction prop-
3 erty”.

4 (e) CERTAIN GOVERNMENTAL USE PROPERTY TO
5 QUALIFY.—Paragraph (4) of section 50(b) of such Code
6 (relating to property used by governmental units or for-
7 eign persons or entities) is amended by redesignating sub-
8 paragraphs (D) and (E) as subparagraphs (E) and (F),
9 respectively, and by inserting after subparagraph (C) the
10 following new subparagraph:

11 “(D) EXCEPTION FOR RESERVATION IN-
12 FRASTRUCTURE INVESTMENT.—This paragraph
13 shall not apply for purposes of determining the
14 Indian reservation credit with respect to res-
15 ervation infrastructure investment.”.

16 (f) APPLICATION OF AT-RISK RULES.—Subpara-
17 graph (C) of section 49(a)(1) of such Code is amended
18 by striking “and” at the end of clause (ii), by striking
19 the period at the end of clause (iii) and inserting “, and”,
20 and by adding at the end the following new clause:

21 “(iv) the qualified investment in quali-
22 fied Indian reservation property.”.

23 (g) CLERICAL AMENDMENTS.—

24 (1) Section 48 of such Code is amended by
25 striking the heading and inserting the following:

1 **“SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT; IN-**
2 **DIAN RESERVATION CREDIT.”.**

3 (2) The table of sections for subpart E of part
4 IV of subchapter A of chapter 1 is amended by
5 striking the item relating to section 48 and inserting
6 the following:

“Sec. 48. Energy credit; reforestation credit; Indian reservation
credit.”.

7 (h) **EFFECTIVE DATE.**—The amendments made by
8 this section shall apply to property placed in service after
9 December 31, 2003.

○