

110TH CONGRESS
1ST SESSION

S. 1508

To amend the Internal Revenue Code of 1986 to extend and expand various tax incentives for production of renewable energy and clean energy sources, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Mr. DORGAN 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 extend and expand various tax incentives for production of renewable energy and clean energy sources, 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; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Clean Energy Production Tax Incentives Act of 2007”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—The table of contents for
 5 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—CLEAN ENERGY PRODUCTION TAX INCENTIVES

- Sec. 101. Extension of and increase in renewable electricity production credit.
- Sec. 102. Modifications to credit for clean renewable energy bonds.
- Sec. 103. Extension of qualifying advanced clean coal project credit.
- Sec. 104. Clean coal energy bonds.
- Sec. 105. Credit for capture and storage or use of carbon dioxide.
- Sec. 106. Carbon dioxide capture bonds.
- Sec. 107. Incentives for investment in electric transmission property.
- Sec. 108. Electric transmission property bonds.
- Sec. 109. Extension and modification of investment credit for qualified fuel cell property, qualified microturbine property, and solar property.

TITLE II—REVENUE PROVISIONS

- Sec. 201. Tax treatment of controlled foreign corporations established in tax havens.
- Sec. 202. Taxation of income of controlled foreign corporations attributable to imported property.
- Sec. 203. Modification of effective date of leasing provisions of the American Jobs Creation Act of 2004.
- Sec. 204. Clarification of economic substance doctrine.
- Sec. 205. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 206. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

6 **TITLE I—CLEAN ENERGY** 7 **PRODUCTION TAX INCENTIVES**

8 **SEC. 101. EXTENSION OF AND INCREASE IN RENEWABLE** 9 **ELECTRICITY PRODUCTION CREDIT.**

10 (a) EXTENSION.—Paragraphs (1), (2), (3), (4), (5),
 11 (6), (7), and (9) of section 45(d) (relating to qualified fa-
 12 cilities) is amended by striking “January 1, 2009” each
 13 place it appears and inserting “January 1, 2019”.

1 (b) INCREASE IN CREDIT RATE.—

2 (1) IN GENERAL.—Paragraph (1) of section
3 45(a) is amended by striking “1.5 cents” and insert-
4 ing “2.1 cents”.

5 (2) MODIFICATION OF INFLATION ADJUST-
6 MENT.—

7 (A) IN GENERAL.—Section 45(e)(2)(B)
8 (defining inflation adjustment factor) is amend-
9 ed by inserting “(calendar year 2006 in the
10 case of the 2.1 cent amount in subsection (a))”
11 after “1992”.

12 (B) CONFORMING AMENDMENT.—Para-
13 graph (2) of section 45(b) is amended by strik-
14 ing “1.5 cent” and inserting “2.1 cent”.

15 (3) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply to electricity produced
17 and sold after the date of the enactment of this Act.

18 **SEC. 102. MODIFICATIONS TO CREDIT FOR CLEAN RENEW-**
19 **ABLE ENERGY BONDS.**

20 (a) INCREASE IN AMOUNT OF BONDS DESIGNATED;
21 10 YEAR EXTENSION.—

22 (1) IN GENERAL.—Subsection (f) of section 54
23 is amended to read as follows:

24 “(f) LIMITATION ON AMOUNT OF BONDS DES-
25 IGNATED.—

1 “(1) NATIONAL LIMITATION.—There is a na-
2 tional clean renewable energy bond limitation for
3 each calendar year. Such limitation is
4 \$1,000,000,000 for 2008, 2009, 2010, 2011, 2012,
5 2013, 2014, 2015, 2016, and 2017, and zero there-
6 after.

7 “(2) ALLOCATION BY SECRETARY.—The na-
8 tional clean renewable energy bond limitation for a
9 calendar year shall be allocated by the Secretary
10 among qualified projects in such manner as the Sec-
11 retary determines appropriate, except that the Sec-
12 retary may not allocate more than \$625,000,000 of
13 such limitation for each calendar year to finance
14 qualified projects of qualified borrowers which are
15 governmental bodies.”.

16 (2) CONFORMING AMENDMENT.—Section 54 is
17 amended by striking subsection (m).

18 (b) ADDITIONAL PERIOD FOR REIMBURSEMENT OF
19 COSTS PAID BY BORROWER.—Section 54(d)(2)(C) is
20 amended by striking clause (iii) and inserting the following
21 new clause:

22 “(iii) the reimbursement is made not
23 later than 18 months after the date the
24 original expenditure is paid or, if later, the

1 date that the project is placed in service or
2 abandoned.

3 In no event may the reimbursement under
4 clause (iii) be made more than 3 years after the
5 date the original expenditure is paid.”.

6 (c) CLARIFICATION OF RATABLE PRINCIPAL AMORTI-
7 ZATION REQUIREMENT.—

8 (1) IN GENERAL.—Paragraph (5) of section
9 54(l) is amended to read as follows:

10 “(5) RATABLE PRINCIPAL AMORTIZATION RE-
11 QUIRED.—A bond shall not be treated as a clean re-
12 newable energy bond unless it is part of an issue
13 which provides for an equal amount of principal to
14 be paid by the qualified issuer during each 12-month
15 period that the issue is outstanding (other than the
16 first 12-month period).”.

17 (2) CONFORMING AMENDMENT.—The third sen-
18 tence of section 54(e)(2) is amended by striking
19 “subsection (l)(6)” and inserting “Subsection
20 (l)(5)”.

21 (d) MAXIMUM TERM OF ISSUE.—The second sen-
22 tence of section 54(e)(2) is amended by inserting “the
23 greater of 15 years or” after “Such maximum term shall
24 be”.

25 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to obligations issued after December 31,
 4 2006.

5 (2) ANNUAL BOND LIMITATION.—The amend-
 6 ments made by subsection (a) shall apply to obliga-
 7 tions issued after December 31, 2007.

8 **SEC. 103. EXTENSION OF QUALIFYING ADVANCED CLEAN**
 9 **COAL PROJECT CREDIT.**

10 (a) IN GENERAL.—Paragraph (3) of section
 11 48A(d)(3) (relating to aggregate credits) is amended to
 12 read as follows:

13 “(3) AGGREGATE CREDIT LIMITATIONS.—

14 “(A) INITIAL ALLOCATIONS.—

15 “(i) IN GENERAL.—The aggregate
 16 credits allowed under subsection (a) for
 17 projects certified by the Secretary under
 18 paragraph (2) with respect to which an ap-
 19 plication has been accepted under para-
 20 graph (2)(C) before January 1, 2008, may
 21 not exceed \$1,300,000,000.

22 “(ii) PARTICULAR PROJECTS.—Of the
 23 dollar amount in clause (i), the Secretary
 24 is authorized to certify—

1 “(I) \$800,000,000 for integrated
2 gasification combined cycle projects,
3 and

4 “(II) \$500,000,000 for projects
5 which use other advanced coal-based
6 generation technologies.

7 “(iii) PRIORITIES.—The Secretary
8 shall give high priority to projects that in-
9 corporate capture and long-term storage of
10 carbon dioxide, including carbon dioxide
11 enhanced oil recovery.

12 “(iv) CARRYOVER.—

13 “(I) IN GENERAL.—If the dollar
14 amount under clause (i) exceeds the
15 amount allocated to all projects for
16 which an application has been accept-
17 ed before January 1, 2008, the dollar
18 amount under subparagraph (B)(i)
19 for calendar year 2007 shall be in-
20 creased by the amount of such excess.

21 “(II) ALLOCATION.—Any amount
22 redistributed under clause (i) shall be
23 allocated to the same category under
24 subparagraph (B)(ii) as the category

1 of the original project to which it was
2 allocated.

3 “(B) ANNUAL ALLOCATION.—

4 “(i) IN GENERAL.—In the case of
5 projects with respect to which an applica-
6 tion has been accepted under paragraph
7 (2)(C) in any calendar year after 2007 and
8 before 2018, the aggregate credits allowed
9 under subsection (a) for all projects ac-
10 cepted in such calendar year may not ex-
11 ceed \$750,000,000.

12 “(ii) PARTICULAR PROJECTS.—Of the
13 dollar amount in clause (i) with respect to
14 any calendar year, the Secretary is author-
15 ized to certify—

16 “(I) \$550,000,000 for integrated
17 gasification combined cycle projects,
18 and

19 “(II) \$200,000,000 for projects
20 which use other advanced coal-based
21 generation technologies.

22 “(iii) PRIORITIES.—The Secretary
23 shall give high priority to projects that in-
24 corporate capture and long-term storage of
25 carbon dioxide, including for carbon diox-

1 ide enhanced oil recovery, permanent geo-
2 logical storage, or other purposes.

3 “(iv) CARRYOVERS.—If for any cal-
4 endar year the dollar amount under sub-
5 clause (I) or (II) of clause (ii) exceeds the
6 amount allocated to all projects for which
7 an application has been accepted during
8 such calendar year, such dollar amount for
9 the following calendar year shall be in-
10 creased by the amount of such excess.

11 “(C) REDISTRIBUTIONS.—

12 “(i) IN GENERAL.—If any dollar
13 amount allocated to a project under this
14 paragraph has been revoked pursuant to
15 paragraph (2)(D), then the dollar amount
16 under subparagraph (B)(i) for the next
17 available calendar year shall be increased
18 by the amount of the dollar amount so re-
19 voked.

20 “(ii) ALLOCATION.—Any amount re-
21 distributed under clause (i) shall be allo-
22 cated to the same category under subpara-
23 graph (B)(ii) as the category of the origi-
24 nal project to which it was allocated.”.

25 (b) CONFORMING AMENDMENTS.—

1 “(1) IN GENERAL.—The amount of the credit
2 determined under this subsection with respect to any
3 credit allowance date for a clean coal energy bond is
4 25 percent of the annual credit determined with re-
5 spect to such bond.

6 “(2) ANNUAL CREDIT.—The annual credit de-
7 termined with respect to any clean coal energy bond
8 is the product of—

9 “(A) the credit rate determined by the Sec-
10 retary under paragraph (3) for the day on
11 which such bond was sold, multiplied by

12 “(B) the outstanding face amount of the
13 bond.

14 “(3) DETERMINATION.—For purposes of para-
15 graph (2), with respect to any clean coal energy
16 bond, the Secretary shall determine daily or cause to
17 be determined daily a credit rate which shall apply
18 to the first day on which there is a binding, written
19 contract for the sale or exchange of the bond. The
20 credit rate for any day is the credit rate which the
21 Secretary or the Secretary’s designee estimates will
22 permit the issuance of clean coal energy bonds with
23 a specified maturity or redemption date without dis-
24 count and without interest cost to the qualified
25 issuer.

1 “(4) CREDIT ALLOWANCE DATE.—For purposes
2 of this section, the term ‘credit allowance date’
3 means—

4 “(A) March 15,

5 “(B) June 15,

6 “(C) September 15, and

7 “(D) December 15.

8 “Such term also includes the last day on which the
9 bond is outstanding.

10 “(5) SPECIAL RULE FOR ISSUANCE AND RE-
11 DEMPTION.—In the case of a bond which is issued
12 during the 3-month period ending on a credit allow-
13 ance date, the amount of the credit determined
14 under this subsection with respect to such credit al-
15 lowance date shall be a ratable portion of the credit
16 otherwise determined based on the portion of the 3-
17 month period during which the bond is outstanding.
18 A similar rule shall apply when the bond is redeemed
19 or matures.

20 “(c) LIMITATION BASED ON AMOUNT OF TAX.—The
21 credit allowed under subsection (a) for any taxable year
22 shall not exceed the excess of—

23 “(1) the sum of the regular tax liability (as de-
24 fined in section 26(b)) plus the tax imposed by sec-
25 tion 55, over

1 “(2) the sum of the credits allowable under this
2 part (other than subpart C, this subpart and section
3 1400N(1)).

4 “(d) CLEAN COAL ENERGY BOND.—For purposes of
5 this section—

6 “(1) IN GENERAL.—The term ‘clean coal en-
7 ergy bond’ means any bond issued as part of an
8 issue if—

9 “(A) the bond is issued by a qualified
10 issuer pursuant to an allocation by the Sec-
11 retary to such issuer of a portion of the na-
12 tional clean coal energy bond limitation under
13 subsection (f)(2),

14 “(B) 95 percent or more of the proceeds
15 from the sale of such issue are to be used for
16 capital expenditures incurred by qualified bor-
17 rowers for 1 or more qualified projects,

18 “(C) the qualified issuer designates such
19 bond for purposes of this section and the bond
20 is in registered form, and

21 “(D) the issue meets the requirements of
22 subsection (h).

23 “(2) QUALIFIED PROJECT; SPECIAL USE
24 RULES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 project’ means a qualifying advanced coal
3 project (as defined in section 48A(c)(1)) placed
4 in service by a qualified borrower.

5 “(B) REFINANCING RULES.—For purposes
6 of paragraph (1)(B), a qualified project may be
7 refinanced with proceeds of a clean coal energy
8 bond only if the indebtedness being refinanced
9 (including any obligation directly or indirectly
10 refinanced by such indebtedness) was originally
11 incurred by a qualified borrower after the date
12 of the enactment of this section.

13 “(C) REIMBURSEMENT.—For purposes of
14 paragraph (1)(B), a clean coal energy bond
15 may be issued to reimburse a qualified borrower
16 for amounts paid after the date of the enact-
17 ment of this section with respect to a qualified
18 project, but only if—

19 “(i) prior to the payment of the origi-
20 nal expenditure, the qualified borrower de-
21 clared its intent to reimburse such expendi-
22 ture with the proceeds of a clean coal en-
23 ergy bond,

24 “(ii) not later than 60 days after pay-
25 ment of the original expenditure, the quali-

1 fied issuer adopts an official intent to re-
2 imburse the original expenditure with such
3 proceeds, and

4 “(iii) the reimbursement is made not
5 later than 18 months after the date the
6 original expenditure is paid or, if later, the
7 date that the project is placed in service or
8 abandoned.

9 In no event may the reimbursement under
10 clause (iii) be made more than 3 years after the
11 date the original expenditure is paid.

12 “(D) TREATMENT OF CHANGES IN USE.—
13 For purposes of paragraph (1)(B), the proceeds
14 of an issue shall not be treated as used for a
15 qualified project to the extent that a qualified
16 borrower takes any action within its control
17 which causes such proceeds not to be used for
18 a qualified project. The Secretary shall pre-
19 scribe regulations specifying remedial actions
20 that may be taken (including conditions to tak-
21 ing such remedial actions) to prevent an action
22 described in the preceding sentence from caus-
23 ing a bond to fail to be a clean coal energy
24 bond.

25 “(e) MATURITY LIMITATIONS.—

1 “(1) DURATION OF TERM.—A bond shall not be
2 treated as a clean coal energy bond if the maturity
3 of such bond exceeds the maximum term determined
4 by the Secretary under paragraph (2) with respect
5 to such bond.

6 “(2) MAXIMUM TERM.—During each calendar
7 month, the Secretary shall determine the maximum
8 term permitted under this paragraph for bonds
9 issued during the following calendar month. Such
10 maximum term shall be the greater of 15 years or
11 the term which the Secretary estimates will result in
12 the present value of the obligation to repay the prin-
13 cipal on the bond being equal to 50 percent of the
14 face amount of such bond. Such present value shall
15 be determined without regard to the requirements of
16 subsection (1)(5) and using as a discount rate the
17 average annual interest rate of tax of tax-exempt ob-
18 ligations having a term of 10 years or more which
19 are issued during the month. If the term as so deter-
20 mined is not a multiple of a whole year, such term
21 shall be rounded to the next highest whole year.

22 “(f) LIMITATION ON AMOUNT OF BONDS DES-
23 IGNATED.—

1 “(1) NATIONAL LIMITATION.—There is a na-
2 tional clean coal energy bond limitation of
3 \$5,000,000,000.

4 “(2) ALLOCATION BY SECRETARY.—The Sec-
5 retary shall allocate the amount described in para-
6 graph (1) among qualified projects in such manner
7 as the Secretary determines appropriate, except that
8 the Secretary may not allocate more than
9 \$3,125,000,000 of the national clean coal energy
10 bond limitation to finance qualified projects of quali-
11 fied borrowers which are public power entities.

12 “(g) CREDIT INCLUDED IN GROSS INCOME.—Gross
13 income includes the amount of the credit allowed to the
14 taxpayer under this section (determined without regard to
15 subsection (c)) and the amount so included shall be treat-
16 ed as interest income.

17 “(h) SPECIAL RULES RELATING TO EXPENDI-
18 TURES.—

19 “(1) IN GENERAL.—An issue shall be treated as
20 meeting the requirements of this subsection if, as of
21 the date of issuance, the qualified issuer reasonably
22 expects—

23 “(A) at least 95 percent of the proceeds
24 from the sale of the issue are to be spent for
25 1 or more qualified projects within the 5-year

1 period beginning on the date of issuance of the
2 clean energy bond,

3 “(B) a binding commitment with a third
4 party to spend at least 10 percent of the pro-
5 ceeds from the sale of the issue will be incurred
6 within the 6-month period beginning on the
7 date of issuance of the clean energy bond or, in
8 the case of a clean energy bond the proceeds of
9 which are to be loaned to 2 or more qualified
10 borrowers, such binding commitment will be in-
11 curred within the 6-month period beginning on
12 the date of the loan of such proceeds to a quali-
13 fied borrower, and

14 “(C) such projects will be completed with
15 due diligence and the proceeds from the sale of
16 the issue will be spent with due diligence.

17 “(2) EXTENSION OF PERIOD.—Upon submis-
18 sion of a request prior to the expiration of the period
19 described in paragraph (1)(A), the Secretary may
20 extend such period if the qualified issuer establishes
21 that the failure to satisfy the 5-year requirement is
22 due to reasonable cause and the related projects will
23 continue to proceed with due diligence.

24 “(3) FAILURE TO SPEND REQUIRED AMOUNT
25 OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-

1 tent that less than 95 percent of the proceeds of
2 such issue are expended by the close of the 5-year
3 period beginning on the date of issuance (or if an
4 extension has been obtained under paragraph (2), by
5 the close of the extended period), the qualified issuer
6 shall redeem all of the nonqualified bonds within 90
7 days after the end of such period. For purposes of
8 this paragraph, the amount of the nonqualified
9 bonds required to be redeemed shall be determined
10 in the same manner as under section 142.

11 “(i) SPECIAL RULES RELATING TO ARBITRAGE.—A
12 bond which is part of an issue shall not be treated as a
13 clean coal energy bond unless, with respect to the issue
14 of which the bond is a part, the qualified issuer satisfies
15 the arbitrage requirements of section 148 with respect to
16 proceeds of the issue.

17 “(j) COOPERATIVE ELECTRIC COMPANY; CLEAN
18 COAL ENERGY BOND LENDER; PUBLIC POWER ENTITY;
19 QUALIFIED BORROWER.—For purposes of this section—

20 “(1) COOPERATIVE ELECTRIC COMPANY.—The
21 term ‘cooperative electric company’ means a mutual
22 or cooperative electric company described in section
23 501(c)(12) or section 1381(a)(2)(C), or a not-for-
24 profit electric utility which has received a loan or
25 loan guarantee under the Rural Electrification Act.

1 “(2) CLEAN COAL ENERGY BOND LENDER.—

2 The term ‘clean coal energy bond lender’ means a
3 lender which is a cooperative which is owned by, or
4 has outstanding loans to, 100 or more cooperative
5 electric companies and is in existence on February
6 1, 2002, and shall include any affiliated entity which
7 is controlled by such lender.

8 “(3) PUBLIC POWER ENTITY.—The term ‘public
9 power entity’ means a State utility with a service ob-
10 ligation, as such terms are defined in section 217 of
11 the Federal Power Act (as in effect on the date of
12 the enactment of this paragraph).

13 “(4) QUALIFIED ISSUER.—The term ‘qualified
14 issuer’ means—

15 “(A) a clean coal energy bond lender,

16 “(B) a cooperative electric company, or

17 “(C) a public power entity.

18 “(5) QUALIFIED BORROWER.—The term ‘quali-
19 fied borrower’ means—

20 “(A) a mutual or cooperative electric com-

21 pany described in section 501(c)(12) or

22 1381(a)(2)(C), or

23 “(B) a public power entity.

24 “(k) SPECIAL RULES RELATING TO POOL BONDS.—

25 No portion of a pooled financing bond may be allocable

1 to any loan unless the borrower has entered into a written
2 loan commitment for such portion prior to the issue date
3 of such issue.

4 “(1) OTHER DEFINITIONS AND SPECIAL RULES.—
5 For purposes of this section—

6 “(1) BOND.—The term ‘bond’ includes any ob-
7 ligation.

8 “(2) POOLED FINANCING BOND.—The term
9 ‘pooled financing bond’ shall have the meaning given
10 such term by section 149(f)(4)(A).

11 “(3) PARTNERSHIP; S CORPORATION; AND
12 OTHER PASS-THRU ENTITIES.—

13 “(A) IN GENERAL.—Under regulations
14 prescribed by the Secretary, in the case of a
15 partnership, trust, S corporation, or other pass-
16 thru entity, rules similar to the rules of section
17 41(g) shall apply with respect to the credit al-
18 lowable under subsection (a).

19 “(B) NO BASIS ADJUSTMENT.—Rules simi-
20 lar to the rules under section 1397E(l) shall
21 apply.

22 “(4) BONDS HELD BY REGULATED INVEST-
23 MENT COMPANIES.—If any clean coal energy bond is
24 held by a regulated investment company, the credit
25 determined under subsection (a) shall be allowed to

1 shareholders of such company under procedures pre-
2 scribed by the Secretary.

3 “(5) RATABLE PRINCIPAL AMORTIZATION RE-
4 QUIRED.—A bond shall not be treated as a clean
5 coal energy bond unless it is part of an issue which
6 provides for one-half of the principal amount of the
7 issue to be paid in equal amounts in each 12-month
8 period the issue is outstanding (excluding the first
9 2 12-month periods the issue is outstanding) prior
10 to the year in which the issue matures.

11 “(6) REPORTING.—Issuers of clean coal energy
12 bonds shall submit reports similar to the reports re-
13 quired under section 149(e).

14 “(m) TERMINATION.—This section shall not apply
15 with respect to any bond issued after December 31,
16 2017.”.

17 (b) REPORTING.—Subsection (d) of section 6049 (re-
18 lating to returns regarding payments of interest) is
19 amended by adding at the end the following new para-
20 graph:

21 “(9) REPORTING OF CREDIT ON CLEAN COAL
22 ENERGY BONDS.—

23 “(A) IN GENERAL.—For purposes of sub-
24 section (a), the term ‘interest’ includes amounts
25 includible in gross income under section 54A(g)

1 and such amounts shall be treated as paid on
2 the credit allowance date (as defined in section
3 54A(b)(4)).

4 “(B) REPORTING TO CORPORATIONS,
5 ETC.—Except as otherwise provided in regula-
6 tions, in the case of any interest described in
7 subparagraph (A), subsection (b)(4) shall be
8 applied without regard to subparagraphs (A),
9 (H), (I), (J), (K), and (L)(i) of such subsection.

10 “(C) REGULATORY AUTHORITY.—The Sec-
11 retary may prescribe such regulations as are
12 necessary or appropriate to carry out the pur-
13 poses of this paragraph, including regulations
14 which require more frequent or more detailed
15 reporting.”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for subpart H of part IV of subchapter A of chapter 1
18 is amended by adding at the end the following new item:

“Sec. 54A. Credit to holders of clean coal energy bonds.”.

19 (d) ISSUANCE OF REGULATIONS.—The Secretary of
20 the Treasury shall issues regulations required under sec-
21 tion 54A of the Internal Revenue Code of 1986 (as added
22 by this section) not later than 120 days after the date
23 of the enactment of this Act.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to bonds issued after December
3 31, 2007.

4 **SEC. 105. CREDIT FOR CAPTURE AND STORAGE OR USE OF**
5 **CARBON DIOXIDE.**

6 (a) TAX CREDIT FOR CARBON DIOXIDE CAPTURED
7 FROM INDUSTRIAL SOURCES AND USED IN ENHANCED
8 OIL AND NATURAL GAS RECOVERY, AND FOR OTHER
9 PURPOSES.—

10 (1) IN GENERAL.—Subpart D of part IV of
11 subchapter A of chapter 1 (relating to business cred-
12 its) is amended by adding at the end the following
13 new section:

14 **“SEC. 450. CREDIT FOR CAPTURE AND STORAGE OR USE**
15 **OF CARBON DIOXIDE.**

16 “(a) GENERAL RULE.—For purposes of section 38,
17 the captured carbon dioxide tertiary injectant credit for
18 any taxable year is an amount equal to the product of—

19 “(1) the credit amount, and

20 “(2) the qualified captured carbon dioxide
21 which is attributable to the taxpayer.

22 “(b) CREDIT AMOUNT.—For purposes of this sec-
23 tion—

1 “(1) IN GENERAL.—The credit amount is \$0.75
2 per 1,500 standard cubic feet of qualified captured
3 carbon dioxide.

4 “(2) INFLATION ADJUSTMENT.—In the case of
5 any taxable year beginning in a calendar year after
6 2007, there shall be substituted for the \$0.75
7 amount under paragraph (1) an amount equal to the
8 product of—

9 “(A) \$0.75, multiplied by

10 “(B) the inflation adjustment factor for
11 such calendar year determined under section
12 43(b)(3)(B) for such calendar year, determined
13 by substituting ‘2006’ for ‘1990’.

14 “(3) CREDIT AMOUNT FOR CAPTURE AND STOR-
15 AGE.—In the case of carbon dioxide which is quali-
16 fied captured carbon dioxide by reason of subsection
17 (c)(1)(D)(i), paragraphs (1) and (2) shall be applied
18 by substituting ‘\$1.00’ for ‘\$0.75’ each place it ap-
19 pears.

20 “(c) QUALIFIED CAPTURED CARBON DIOXIDE.—For
21 purposes of this section—

22 “(1) IN GENERAL.—The term ‘qualified cap-
23 tured carbon dioxide’ means carbon dioxide captured
24 within the United States (within the meaning of sec-
25 tion 638(1)) or a possession of the United States

1 (within the meaning of section 638(2)) from an an-
2 thropogenic source that—

3 “(A) would otherwise be released into the
4 atmosphere as industrial emission of green-
5 house gas,

6 “(B) is measurable at the source of cap-
7 ture,

8 “(C) is compressed, treated, and (if nec-
9 essary) transported via pipeline, and

10 “(D) is—

11 “(i) permanently sequestered in saline
12 or other underground formations, or

13 “(ii) sold or used as a tertiary
14 injectant in a qualified enhanced oil or nat-
15 ural gas recovery project and permanently
16 sequestered in geological formations as a
17 result of such project.

18 “(2) RECYCLED CARBON DIOXIDE.—The term
19 ‘qualified captured carbon dioxide’ includes the ini-
20 tial deposit of captured carbon dioxide used as a ter-
21 tiary injectant. Such term does not include carbon
22 dioxide that is re-captured, recycled, and re-injected
23 as part of the enhanced oil or natural gas recovery
24 project.

1 “(3) ANTHROPOGENIC SOURCE.—An anthropo-
2 genic source of carbon dioxide is an industrial
3 source, including any coal or natural gas fired elec-
4 trical generating power station, and facilities related
5 to such source.

6 “(4) QUALIFIED ENHANCED OIL OR NATURAL
7 GAS RECOVERY PROJECT.—The term ‘qualified en-
8 hanced oil or natural gas recovery project’ has the
9 meaning given the term ‘qualified enhanced oil re-
10 covery project’ by section 43(c)(2), by substituting
11 ‘crude oil or natural gas’ for ‘crude oil’ in subpara-
12 graph (A)(i) thereof.

13 “(5) TERTIARY INJECTANT.—The term ‘ter-
14 tiary injectant’ has the same meaning as when used
15 in section 193(b)(1).”.

16 (2) CREDIT TREATED AS PART OF GENERAL
17 BUSINESS CREDIT.—Section 38(b) (relating to gen-
18 eral business credit) is amended by striking “plus”
19 at the end of paragraph (30), by striking the period
20 at the end of paragraph (31) and inserting “, plus”,
21 and by adding at the end of following new para-
22 graph:

23 “(32) the captured carbon dioxide tertiary
24 injectant credit determined under section 450(a).”.

1 (3) CLERICAL AMENDMENT.—The table of sec-
2 tions for subpart B of part IV of subchapter A of
3 chapter 1 is amended by adding at the end the fol-
4 lowing new item:

“Sec. 450. Credit for capture and storage or use of carbon dioxide.”.

5 (4) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply to taxable years begin-
7 ning after the date of the enactment of this Act.

8 (b) CLASS LIFE OF CARBON DIOXIDE DISTRIBUTION
9 PIPELINES.—

10 (1) IN GENERAL.—Subparagraph (D) of section
11 168(e)(3) (relating to 10-year property) is amended
12 by striking “and” at the end of clause (i), by strik-
13 ing the period at the end of clause (ii) and inserting
14 “, and”, and by adding at the end the following new
15 clause:

16 “(iii) any pipeline used primarily for
17 the distribution of carbon dioxide for use
18 as a tertiary injectant (within the meaning
19 of section 193(b)(1)) for a qualified en-
20 hanced oil or natural gas recovery project
21 (as defined in section 450(c)(4)) and the
22 original use of which commences with the
23 taxpayer after the date of the enactment of
24 Clean Energy Production Tax Incentives
25 Act of 2007.”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this section shall apply to property placed in serv-
3 ice after the date of the enactment of this Act.

4 **SEC. 106. CARBON DIOXIDE CAPTURE BONDS.**

5 (a) IN GENERAL.—Subpart H of part IV of sub-
6 chapter A of chapter 1, as amended by this Act, is amend-
7 ed by adding at the end the following new section:

8 **“SEC. 54B. CREDIT TO HOLDERS OF CARBON DIOXIDE CAP-**
9 **TURE BONDS.**

10 “(a) ALLOWANCE OF CREDIT.—If a taxpayer holds
11 a carbon dioxide capture bond on 1 or more credit allow-
12 ance dates of the bond occurring during any taxable year,
13 there shall be allowed as a credit against the tax imposed
14 by this chapter for the taxable year an amount equal to
15 the sum of the credits determined under subsection (b)
16 with respect to such dates.

17 “(b) AMOUNT OF CREDIT.—

18 “(1) IN GENERAL.—The amount of the credit
19 determined under this subsection with respect to any
20 credit allowance date for a carbon dioxide capture
21 bond is 25 percent of the annual credit determined
22 with respect to such bond.

23 “(2) ANNUAL CREDIT.—The annual credit de-
24 termined with respect to any carbon dioxide capture
25 bond is the product of—

1 “(A) the credit rate determined by the Sec-
2 retary under paragraph (3) for the day on
3 which such bond was sold, multiplied by

4 “(B) the outstanding face amount of the
5 bond.

6 “(3) DETERMINATION.—For purposes of para-
7 graph (2), with respect to any carbon dioxide cap-
8 ture bond, the Secretary shall determine daily or
9 cause to be determined daily a credit rate which
10 shall apply to the first day on which there is a bind-
11 ing, written contract for the sale or exchange of the
12 bond. The credit rate for any day is the credit rate
13 which the Secretary or the Secretary’s designee esti-
14 mates will permit the issuance of carbon dioxide cap-
15 ture bonds with a specified maturity or redemption
16 date without discount and without interest cost to
17 the qualified issuer.

18 “(4) CREDIT ALLOWANCE DATE.—For purposes
19 of this section, the term ‘credit allowance date’
20 means—

21 “(A) March 15,

22 “(B) June 15,

23 “(C) September 15, and

24 “(D) December 15.

1 “Such term also includes the last day on which the
2 bond is outstanding.

3 “(5) SPECIAL RULE FOR ISSUANCE AND RE-
4 DEMPTION.—In the case of a bond which is issued
5 during the 3-month period ending on a credit allow-
6 ance date, the amount of the credit determined
7 under this subsection with respect to such credit al-
8 lowance date shall be a ratable portion of the credit
9 otherwise determined based on the portion of the 3-
10 month period during which the bond is outstanding.
11 A similar rule shall apply when the bond is redeemed
12 or matures.

13 “(c) LIMITATION BASED ON AMOUNT OF TAX.—The
14 credit allowed under subsection (a) for any taxable year
15 shall not exceed the excess of—

16 “(1) the sum of the regular tax liability (as de-
17 fined in section 26(b)) plus the tax imposed by sec-
18 tion 55, over

19 “(2) the sum of the credits allowable under this
20 part (other than subpart C, this subpart and section
21 1400N(l)).

22 “(d) CARBON DIOXIDE CAPTURE BOND.—For pur-
23 poses of this section—

1 “(1) IN GENERAL.—The term ‘carbon dioxide
2 capture bond’ means any bond issued as part of an
3 issue if—

4 “(A) the bond is issued by a qualified
5 issuer pursuant to an allocation by the Sec-
6 retary to such issuer of a portion of the na-
7 tional carbon dioxide capture bond limitation
8 under subsection (f)(2),

9 “(B) 95 percent or more of the proceeds
10 from the sale of such issue are to be used for
11 capital expenditures incurred by qualified bor-
12 rowers for 1 or more qualified projects,

13 “(C) the qualified issuer designates such
14 bond for purposes of this section and the bond
15 is in registered form, and

16 “(D) the issue meets the requirements of
17 subsection (h).

18 “(2) QUALIFIED PROJECT; SPECIAL USE
19 RULES.—

20 “(A) QUALIFIED PROJECT.—The term
21 ‘qualified project’ means a project placed in
22 service by a qualified borrower for the proc-
23 essing of qualified captured carbon dioxide (as
24 defined in section 45O(c)(1)).

1 “(B) REFINANCING RULES.—For purposes
2 of paragraph (1)(B), a qualified project may be
3 refinanced with proceeds of a carbon dioxide
4 capture bond only if the indebtedness being re-
5 financed (including any obligation directly or
6 indirectly refinanced by such indebtedness) was
7 originally incurred by a qualified borrower after
8 the date of the enactment of this section.

9 “(C) REIMBURSEMENT.—For purposes of
10 paragraph (1)(B), a carbon dioxide capture
11 bond may be issued to reimburse a qualified
12 borrower for amounts paid after the date of the
13 enactment of this section with respect to a
14 qualified project, but only if—

15 “(i) prior to the payment of the origi-
16 nal expenditure, the qualified borrower de-
17 clared its intent to reimburse such expendi-
18 ture with the proceeds of a carbon dioxide
19 capture bond,

20 “(ii) not later than 60 days after pay-
21 ment of the original expenditure, the quali-
22 fied issuer adopts an official intent to re-
23 imburse the original expenditure with such
24 proceeds, and

1 “(iii) the reimbursement is made not
2 later than 18 months after the date the
3 original expenditure is paid or, if later, the
4 date that the project is placed in service or
5 abandoned.

6 In no event may the reimbursement under
7 clause (iii) be made more than 3 years after the
8 date the original expenditure is paid.

9 “(D) TREATMENT OF CHANGES IN USE.—
10 For purposes of paragraph (1)(B), the proceeds
11 of an issue shall not be treated as used for a
12 qualified project to the extent that a qualified
13 borrower takes any action within its control
14 which causes such proceeds not to be used for
15 a qualified project. The Secretary shall pre-
16 scribe regulations specifying remedial actions
17 that may be taken (including conditions to tak-
18 ing such remedial actions) to prevent an action
19 described in the preceding sentence from caus-
20 ing a bond to fail to be a carbon dioxide cap-
21 ture bond.

22 “(e) MATURITY LIMITATIONS.—

23 “(1) DURATION OF TERM.—A bond shall not be
24 treated as a carbon dioxide capture bond if the ma-
25 turity of such bond exceeds the maximum term de-

1 terminated by the Secretary under paragraph (2) with
2 respect to such bond.

3 “(2) MAXIMUM TERM.—During each calendar
4 month, the Secretary shall determine the maximum
5 term permitted under this paragraph for bonds
6 issued during the following calendar month. Such
7 maximum term shall be the greater of 15 years or
8 the term which the Secretary estimates will result in
9 the present value of the obligation to repay the prin-
10 cipal on the bond being equal to 50 percent of the
11 face amount of such bond. Such present value shall
12 be determined without regard to the requirements of
13 subsection (1)(5) and using as a discount rate the
14 average annual interest rate of tax of tax-exempt ob-
15 ligations having a term of 10 years or more which
16 are issued during the month. If the term as so deter-
17 mined is not a multiple of a whole year, such term
18 shall be rounded to the next highest whole year.

19 “(f) LIMITATION ON AMOUNT OF BONDS DES-
20 IGNATED.—

21 “(1) NATIONAL LIMITATION.—There is a na-
22 tional carbon dioxide capture bond limitation of
23 \$5,000,000,000.

24 “(2) ALLOCATION BY SECRETARY.—The Sec-
25 retary, in consultation with the Secretary of Energy,

1 shall allocate the amount described in paragraph (1)
2 among qualified projects in such manner as the Sec-
3 retary determines appropriate, except that the Sec-
4 retary may not allocate more than \$3,125,000,000
5 of the national carbon dioxide capture bond limita-
6 tion to finance qualified projects of qualified bor-
7 rowers which are public power entities.

8 “(g) CREDIT INCLUDED IN GROSS INCOME.—Gross
9 income includes the amount of the credit allowed to the
10 taxpayer under this section (determined without regard to
11 subsection (c)) and the amount so included shall be treat-
12 ed as interest income.

13 “(h) SPECIAL RULES RELATING TO EXPENDI-
14 TURES.—

15 “(1) IN GENERAL.—An issue shall be treated as
16 meeting the requirements of this subsection if, as of
17 the date of issuance, the qualified issuer reasonably
18 expects—

19 “(A) at least 95 percent of the proceeds
20 from the sale of the issue are to be spent for
21 1 or more qualified projects within the 5-year
22 period beginning on the date of issuance of the
23 clean energy bond,

24 “(B) a binding commitment with a third
25 party to spend at least 10 percent of the pro-

1 ceeds from the sale of the issue will be incurred
2 within the 6-month period beginning on the
3 date of issuance of the clean energy bond or, in
4 the case of a clean energy bond the proceeds of
5 which are to be loaned to 2 or more qualified
6 borrowers, such binding commitment will be in-
7 curred within the 6-month period beginning on
8 the date of the loan of such proceeds to a quali-
9 fied borrower, and

10 “(C) such projects will be completed with
11 due diligence and the proceeds from the sale of
12 the issue will be spent with due diligence.

13 “(2) EXTENSION OF PERIOD.—Upon submis-
14 sion of a request prior to the expiration of the period
15 described in paragraph (1)(A), the Secretary may
16 extend such period if the qualified issuer establishes
17 that the failure to satisfy the 5-year requirement is
18 due to reasonable cause and the related projects will
19 continue to proceed with due diligence.

20 “(3) FAILURE TO SPEND REQUIRED AMOUNT
21 OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-
22 tent that less than 95 percent of the proceeds of
23 such issue are expended by the close of the 5-year
24 period beginning on the date of issuance (or if an
25 extension has been obtained under paragraph (2), by

1 the close of the extended period), the qualified issuer
2 shall redeem all of the nonqualified bonds within 90
3 days after the end of such period. For purposes of
4 this paragraph, the amount of the nonqualified
5 bonds required to be redeemed shall be determined
6 in the same manner as under section 142.

7 “(i) SPECIAL RULES RELATING TO ARBITRAGE.—A
8 bond which is part of an issue shall not be treated as a
9 carbon dioxide capture bond unless, with respect to the
10 issue of which the bond is a part, the qualified issuer satis-
11 fies the arbitrage requirements of section 148 with respect
12 to proceeds of the issue.

13 “(j) COOPERATIVE ELECTRIC COMPANY; CARBON DI-
14 OXIDE CAPTURE BOND LENDER; GOVERNMENTAL BODY;
15 QUALIFIED BORROWER.—For purposes of this section—

16 “(1) COOPERATIVE ELECTRIC COMPANY.—The
17 term ‘cooperative electric company’ means a mutual
18 or cooperative electric company described in section
19 501(c)(12) or section 1381(a)(2)(C), or a not-for-
20 profit electric utility which has received a loan or
21 loan guarantee under the Rural Electrification Act.

22 “(2) CARBON DIOXIDE CAPTURE BOND LEND-
23 ER.—The term ‘carbon dioxide capture bond lender’
24 means a lender which is a cooperative which is
25 owned by, or has outstanding loans to, 100 or more

1 cooperative electric companies and is in existence on
2 February 1, 2002, and shall include any affiliated
3 entity which is controlled by such lender.

4 “(3) GOVERNMENTAL BODY.—For purposes of
5 this section, the term ‘governmental body’ means
6 any State, territory, possession of the United States,
7 the District of Columbia, Indian tribal government,
8 and any political subdivision thereof.

9 “(4) QUALIFIED ISSUER.—The term ‘qualified
10 issuer’ means—

11 “(A) a carbon dioxide capture bond lender,

12 “(B) a cooperative electric company, or

13 “(C) a governmental body.

14 “(5) QUALIFIED BORROWER.—The term ‘quali-
15 fied borrower’ means—

16 “(A) a mutual or cooperative electric com-
17 pany described in section 501(c)(12) or
18 1381(a)(2)(C), or

19 “(B) a governmental body.

20 “(k) SPECIAL RULES RELATING TO POOL BONDS.—

21 No portion of a pooled financing bond may be allocable
22 to any loan unless the borrower has entered into a written
23 loan commitment for such portion prior to the issue date
24 of such issue.

1 “(1) OTHER DEFINITIONS AND SPECIAL RULES.—

2 For purposes of this section—

3 “(1) BOND.—The term ‘bond’ includes any ob-
4 ligation.

5 “(2) POOLED FINANCING BOND.—The term
6 ‘pooled financing bond’ shall have the meaning given
7 such term by section 149(f)(4)(A).

8 “(3) PARTNERSHIP; S CORPORATION; AND
9 OTHER PASS-THRU ENTITIES.—

10 “(A) IN GENERAL.—Under regulations
11 prescribed by the Secretary, in the case of a
12 partnership, trust, S corporation, or other pass-
13 thru entity, rules similar to the rules of section
14 41(g) shall apply with respect to the credit al-
15 lowable under subsection (a).

16 “(B) NO BASIS ADJUSTMENT.—Rules simi-
17 lar to the rules under section 1397E(l) shall
18 apply.

19 “(4) BONDS HELD BY REGULATED INVEST-
20 MENT COMPANIES.—If any carbon dioxide capture
21 bond is held by a regulated investment company, the
22 credit determined under subsection (a) shall be al-
23 lowed to shareholders of such company under proce-
24 dures prescribed by the Secretary.

1 “(5) RATABLE PRINCIPAL AMORTIZATION RE-
2 QUIRED.—A bond shall not be treated as a carbon
3 dioxide capture bond unless it is part of an issue
4 which provides for an equal amount of principal to
5 be paid by the qualified issuer during each calendar
6 year that the issue is outstanding.

7 “(6) REPORTING.—Issuers of carbon dioxide
8 capture bonds shall submit reports similar to the re-
9 ports required under section 149(e).

10 “(m) TERMINATION.—This section shall not apply
11 with respect to any bond issued after December 31,
12 2017.”.

13 (b) REPORTING.—Subsection (d) of section 6049 (re-
14 lating to returns regarding payments of interest), as
15 amended by this Act, is amended by adding at the end
16 the following new paragraph:

17 “(10) REPORTING OF CREDIT ON CARBON DI-
18 OXIDE CAPTURE BONDS.—

19 “(A) IN GENERAL.—For purposes of sub-
20 section (a), the term ‘interest’ includes amounts
21 includible in gross income under section 54B(g)
22 and such amounts shall be treated as paid on
23 the credit allowance date (as defined in section
24 54B(b)(4)).

1 “(B) REPORTING TO CORPORATIONS,
2 ETC.—Except as otherwise provided in regula-
3 tions, in the case of any interest described in
4 subparagraph (A), subsection (b)(4) shall be
5 applied without regard to subparagraphs (A),
6 (H), (I), (J), (K), and (L)(i) of such subsection.

7 “(C) REGULATORY AUTHORITY.—The Sec-
8 retary may prescribe such regulations as are
9 necessary or appropriate to carry out the pur-
10 poses of this paragraph, including regulations
11 which require more frequent or more detailed
12 reporting.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subpart H of part IV of subchapter A of chapter 1,
15 as amended by this Act, is amended by adding at the end
16 the following new item:

 “Sec. 54B. Credit to holders of carbon dioxide capture bonds.”.

17 (d) ISSUANCE OF REGULATIONS.—The Secretary of
18 the Treasury shall issues regulations required under sec-
19 tion 54B of the Internal Revenue Code of 1986 (as added
20 by this section) not later than 120 days after the date
21 of the enactment of this Act.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to bonds issued after December
24 31, 2007.

1 **SEC. 107. INCENTIVES FOR INVESTMENT IN ELECTRIC**
 2 **TRANSMISSION PROPERTY.**

3 (a) **ELECTRIC TRANSMISSION PROPERTY INVEST-**
 4 **MENT TAX CREDIT.—**

5 (1) **IN GENERAL.—**Subpart D of part IV of
 6 subchapter A of chapter 1 (relating to business re-
 7 lated credits), as amended by this Act, is amended
 8 by adding at the end the following new section:

9 **“SEC. 45P. ELECTRIC TRANSMISSION PROPERTY INVEST-**
 10 **MENT CREDIT.**

11 “(a) **IN GENERAL.—**For purposes of section 38, the
 12 amount of the electric transmission property investment
 13 credit determined under this section for any taxable year
 14 in the credit period shall be an amount equal to the appli-
 15 cable percentage of the basis of each qualified electric
 16 transmission property.

17 “(b) **APPLICABLE PERCENTAGE.—**For purposes of
 18 this section—

19 “(1) **IN GENERAL.—**The term ‘applicable per-
 20 centage’ means the appropriate percentage pre-
 21 scribed by the Secretary for the first month of the
 22 credit period with respect to qualified electric trans-
 23 mission property.

24 “(2) **METHOD OF PRESCRIBING PERCENT-**
 25 **AGES.—**The percentages prescribed by the Secretary
 26 for any month shall be percentages which will yield

1 over a 10-year period amounts of credit under sub-
2 section (a) which have a present value equal to 80
3 percent of the basis of the qualified electric trans-
4 mission property.

5 “(3) METHOD OF DISCOUNTING.—The present
6 value under paragraph (2) shall be determined—

7 “(A) as of the last day of the 1st year of
8 the 10-year period referred to in paragraph (2),

9 “(B) by using a discount rate equal to 72
10 percent of the average of the annual Federal
11 mid-term rate and the annual Federal long-
12 term rate applicable under section 1274(d)(1)
13 to the month applicable under subparagraph
14 (A) or (B) of paragraph (1) and compounded
15 annually, and

16 “(C) by assuming that the credit allowable
17 under this section for any year is received on
18 the last day of such year.

19 “(c) QUALIFIED ELECTRIC TRANSMISSION PROP-
20 erty; QUALIFIED INTERSTATE ELECTRIC TRANSMISSION
21 INVESTMENT PROJECT; COMPLIANCE PERIOD.—For pur-
22 poses of this section—

23 “(1) QUALIFIED ELECTRIC TRANSMISSION
24 PROPERTY.—The term ‘qualified electric trans-
25 mission property’ means any section 1245 property

1 (as defined in section 1245(a)(3)) used in the trans-
2 mission at 230 or more kilovolts of electricity for
3 sale which is part of a qualified interstate electric
4 transmission investment project at all times during
5 the period—

6 “(A) beginning on the 1st day in the com-
7 pliance period on which such property is part of
8 such an investment project, and

9 “(B) ending on the last day of the compli-
10 ance period with respect to such property.

11 “(2) QUALIFIED INTERSTATE ELECTRIC TRANS-
12 MISSION INVESTMENT PROJECT.—The term ‘quali-
13 fied interstate electric transmission investment
14 project’ means any investment project which consists
15 of the construction of property used in the interstate
16 transmission electricity and which is certified by the
17 Secretary under subsection (e).

18 “(3) COMPLIANCE PERIOD.—The term ‘compli-
19 ance period’ means, with respect to any building, the
20 period of 10 taxable years beginning with the 1st
21 taxable year of the credit period with respect there-
22 to.

23 “(d) DEFINITION AND SPECIAL RULES RELATING TO
24 CREDIT PERIOD.—

1 “(1) CREDIT PERIOD DEFINED.—For purposes
2 of this section, the term ‘credit period’ means, with
3 respect to any property, the period of 10 taxable
4 years beginning with the taxable year in which the
5 property is first placed in service.

6 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
7 PERIOD.—

8 “(A) IN GENERAL.—The credit allowable
9 under subsection (a) with respect to any prop-
10 erty for the 1st taxable year of the credit period
11 shall be determined by multiplying such credit
12 by the fraction—

13 “(i) the numerator of which is the
14 number of full months of such year during
15 which such property was in service, and

16 “(ii) the denominator of which is 12.

17 “(B) DISALLOWED 1ST YEAR CREDIT AL-
18 LOWED IN 11TH YEAR.—Any reduction by rea-
19 son of subparagraph (A) in the credit allowable
20 (without regard to subparagraph (A)) for the
21 1st taxable year of the credit period shall be al-
22 lowable under subsection (a) for the 1st taxable
23 year following the credit period.

24 “(e) CERTIFICATION OF QUALIFIED INTERSTATE
25 ELECTRIC TRANSMISSION INVESTMENT PROJECTS.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, the Sec-
3 retary, in consultation with the Secretary of Energy,
4 shall establish a program identifying criteria for the
5 certification of qualified interstate electric trans-
6 mission investment projects.

7 “(2) CERTIFICATION.—

8 “(A) APPLICATION PERIOD.—Each appli-
9 cant for certification under this paragraph shall
10 submit an application meeting the requirements
11 of subparagraph (B).

12 “(B) REQUIREMENTS FOR APPLICATIONS
13 FOR CERTIFICATION.—An application under
14 subparagraph (A) shall contain such informa-
15 tion as the Secretary may require in order to
16 make a determination to accept or reject an ap-
17 plication for certification. Any information con-
18 tained in the application shall be protected as
19 provided in section 552(b)(4) of title 5, United
20 States Code.

21 “(C) TIME TO ACT UPON APPLICATIONS
22 FOR CERTIFICATION.—The Secretary shall issue
23 a determination as to whether an applicant has
24 met the requirements established under para-

1 graph (1) within 60 days following the date of
2 submittal of the application for certification.

3 “(D) PERIOD OF ISSUANCE.—An applicant
4 which receives a certification shall have 5 years
5 from the date of issuance of the certification in
6 order to place the project in service and if such
7 project is not placed in service by that time pe-
8 riod then the certification shall no longer be
9 valid.

10 “(3) AGGREGATE CREDITS.—The aggregate
11 credits allowed under subsection (a) for projects cer-
12 tified by the Secretary under paragraph (2) may not
13 exceed \$2,500,000,000.

14 “(f) CREDITS FOR ELECTRIC COOPERATIVES AND
15 STATE AND LOCAL GOVERNMENTS.—

16 “(1) ALLOWANCE OF CREDIT.—Any credit
17 which would be allowable under subsection (a) with
18 respect to an organization described in paragraph
19 (4) shall be treated as a credit allowable under sub-
20 part C to such organization.

21 “(2) USE OF CREDIT.—An organization de-
22 scribed in paragraph (4) may assign, trade, sell, or
23 otherwise transfer any credit allowable to such orga-
24 nization under subsection (a) to any taxpayer.

1 “(3) CREDIT NOT INCOME.—A transfer under
2 paragraph (2) of any credit allowable under sub-
3 section (a) shall not result in income for purposes of
4 section 511.

5 “(4) ORGANIZATION DESCRIBED.—An organiza-
6 tion is described in this paragraph if such organiza-
7 tion is—

8 “(A) a State or local government, or

9 “(B) a mutual or cooperative electric com-
10 pany which is described in section 501(c)(12)
11 and exempt from tax under section 501(a).

12 “(g) CERTIFICATIONS AND OTHER REPORTS TO SEC-
13 RETARY.—

14 “(1) CERTIFICATION WITH RESPECT TO 1ST
15 YEAR OF CREDIT PERIOD.—Following the close of
16 the 1st taxable year in the credit period with respect
17 to any qualified electric transmission property, the
18 taxpayer shall certify to the Secretary (at such time
19 and in such form and in such manner as the Sec-
20 retary prescribes)—

21 “(A) the taxable year, and calendar year,
22 in which such property was first placed in serv-
23 ice,

24 “(B) the basis of such property as of the
25 beginning of the credit period, and

1 “(C) such other information as the Sec-
2 retary may require.

3 In the case of a failure to make the certification re-
4 quired by the preceding sentence on the date pre-
5 scribed therefor, unless it is shown that such failure
6 is due to reasonable cause and not to willful neglect,
7 no credit shall be allowable by reason of subsection
8 (a) with respect to such property for any taxable
9 year ending before such certification is made.

10 “(2) ANNUAL REPORTS TO THE SECRETARY.—

11 The Secretary may require taxpayers to submit an
12 information return (at such time and in such form
13 and manner as the Secretary prescribes) for each
14 taxable year setting forth—

15 “(A) the basis for the taxable year of each
16 qualified electric transmission property of the
17 taxpayer, and

18 “(B) such other information as the Sec-
19 retary may require.

20 “(h) REGULATIONS.—The Secretary shall prescribe
21 such regulations as may be necessary or appropriate to
22 carry out the purposes of this section, including regula-
23 tions for recapturing the credit allowed under this section
24 where appropriate.”.

1 (2) CREDIT TREATED AS PART OF GENERAL
 2 BUSINESS CREDIT.—Section 38(b), as amended by
 3 this Act, is amended by striking “plus” at the end
 4 of paragraph (31), by striking the period at the end
 5 of paragraph (32) and inserting “, plus”, and by
 6 adding at the end the following new paragraph:

7 “(33) the electric transmission property invest-
 8 ment credit determined under section 45P(a).”.

9 (3) CLERICAL AMENDMENT.—The table of sec-
 10 tions for subpart B of part IV of subchapter A of
 11 chapter 1 of such Code, as amended by this Act, is
 12 amended by adding at the end the following new
 13 item:

“Sec. 45P. Electric transmission property investment credit.”.

14 (b) ELECTRIC TRANSMISSION PROPERTY TREATED
 15 AS 10-YEAR PROPERTY.—

16 (1) IN GENERAL.—Subparagraph (D) of section
 17 168(e)(3) (relating to 10-year property), as amended
 18 by this Act, is amended by striking “and” at the end
 19 of clause (ii), by striking the period at the end of
 20 clause (iii) and inserting “, and”, and by adding at
 21 the end the following new clause:

22 “(iv) any section 1245 property (as
 23 defined in section 1245(a)(3)) used in the
 24 transmission at 230 or more kilovolts of
 25 electricity for sale and the original use of

1 which commences with the taxpayer after
2 the date of the enactment of this clause.”.

3 (2) CONFORMING AMENDMENT.—Subparagraph
4 (E) of section 168(e)(3) is amended by inserting
5 “and before the date of the enactment of the Clean
6 Energy Production Tax Incentives Act of 2007”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to property placed in
9 service after the date of the enactment of this Act.

10 **SEC. 108. ELECTRIC TRANSMISSION PROPERTY BONDS.**

11 (a) IN GENERAL.—Subpart H of part IV of sub-
12 chapter A of chapter 1, as amended by this Act, is amend-
13 ed by adding at the end the following new section:

14 **“SEC. 54C. CREDIT TO HOLDERS OF ELECTRIC TRANS-**
15 **MISSION PROPERTY BONDS.**

16 “(a) ALLOWANCE OF CREDIT.—If a taxpayer holds
17 an electric transmission property bond on 1 or more credit
18 allowance dates of the bond occurring during any taxable
19 year, there shall be allowed as a credit against the tax
20 imposed by this chapter for the taxable year an amount
21 equal to the sum of the credits determined under sub-
22 section (b) with respect to such dates.

23 “(b) AMOUNT OF CREDIT.—

24 “(1) IN GENERAL.—The amount of the credit
25 determined under this subsection with respect to any

1 credit allowance date for an electric transmission
2 property bond is 25 percent of the annual credit de-
3 termined with respect to such bond.

4 “(2) ANNUAL CREDIT.—The annual credit de-
5 termined with respect to any electric transmission
6 property bond is the product of—

7 “(A) the credit rate determined by the Sec-
8 retary under paragraph (3) for the day on
9 which such bond was sold, multiplied by

10 “(B) the outstanding face amount of the
11 bond.

12 “(3) DETERMINATION.—For purposes of para-
13 graph (2), with respect to any electric transmission
14 property bond, the Secretary shall determine daily or
15 cause to be determined daily a credit rate which
16 shall apply to the first day on which there is a bind-
17 ing, written contract for the sale or exchange of the
18 bond. The credit rate for any day is the credit rate
19 which the Secretary or the Secretary’s designee esti-
20 mates will permit the issuance of electric trans-
21 mission property bonds with a specified maturity or
22 redemption date without discount and without inter-
23 est cost to the qualified issuer.

1 “(4) CREDIT ALLOWANCE DATE.—For purposes
2 of this section, the term ‘credit allowance date’
3 means—

4 “(A) March 15,

5 “(B) June 15,

6 “(C) September 15, and

7 “(D) December 15.

8 “Such term also includes the last day on which the
9 bond is outstanding.

10 “(5) SPECIAL RULE FOR ISSUANCE AND RE-
11 DEMPTION.—In the case of a bond which is issued
12 during the 3-month period ending on a credit allow-
13 ance date, the amount of the credit determined
14 under this subsection with respect to such credit al-
15 lowance date shall be a ratable portion of the credit
16 otherwise determined based on the portion of the 3-
17 month period during which the bond is outstanding.
18 A similar rule shall apply when the bond is redeemed
19 or matures.

20 “(c) LIMITATION BASED ON AMOUNT OF TAX.—The
21 credit allowed under subsection (a) for any taxable year
22 shall not exceed the excess of—

23 “(1) the sum of the regular tax liability (as de-
24 fined in section 26(b)) plus the tax imposed by sec-
25 tion 55, over

1 “(2) the sum of the credits allowable under this
2 part (other than subpart C, this subpart and section
3 1400N(1)).

4 “(d) ELECTRIC TRANSMISSION PROPERTY BOND.—
5 For purposes of this section—

6 “(1) IN GENERAL.—The term ‘electric trans-
7 mission property bond’ means any bond issued as
8 part of an issue if—

9 “(A) the bond is issued by a qualified
10 issuer pursuant to an allocation by the Sec-
11 retary to such issuer of a portion of the na-
12 tional electric transmission property bond limi-
13 tation under subsection (f)(2),

14 “(B) 95 percent or more of the proceeds
15 from the sale of such issue are to be used for
16 capital expenditures incurred by qualified bor-
17 rowers for 1 or more qualified projects,

18 “(C) the qualified issuer designates such
19 bond for purposes of this section and the bond
20 is in registered form, and

21 “(D) the issue meets the requirements of
22 subsection (h).

23 “(2) QUALIFIED PROJECT; SPECIAL USE
24 RULES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 project’ means a project for the installation of
3 any section 1245 property (as defined in section
4 1245(a)(3)) used in the transmission at 230 or
5 more kilovolts of electricity for sale and placed
6 in service by a qualified borrower.

7 “(B) REFINANCING RULES.—For purposes
8 of paragraph (1)(B), a qualified project may be
9 refinanced with proceeds of an electric trans-
10 mission property bond only if the indebtedness
11 being refinanced (including any obligation di-
12 rectly or indirectly refinanced by such indebted-
13 ness) was originally incurred by a qualified bor-
14 rower after the date of the enactment of this
15 section.

16 “(C) REIMBURSEMENT.—For purposes of
17 paragraph (1)(B), an electric transmission
18 property bond may be issued to reimburse a
19 qualified borrower for amounts paid after the
20 date of the enactment of this section with re-
21 spect to a qualified project, but only if—

22 “(i) prior to the payment of the origi-
23 nal expenditure, the qualified borrower de-
24 clared its intent to reimburse such expendi-

1 ture with the proceeds of an electric trans-
2 mission property bond,

3 “(ii) not later than 60 days after pay-
4 ment of the original expenditure, the quali-
5 fied issuer adopts an official intent to re-
6 imburse the original expenditure with such
7 proceeds, and

8 “(iii) the reimbursement is made not
9 later than 18 months after the date the
10 original expenditure is paid or, if later, the
11 date that the project is placed in service or
12 abandoned.

13 In no event may the reimbursement under
14 clause (iii) be made more than 3 years after the
15 date the original expenditure is paid.

16 “(D) TREATMENT OF CHANGES IN USE.—
17 For purposes of paragraph (1)(B), the proceeds
18 of an issue shall not be treated as used for a
19 qualified project to the extent that a qualified
20 borrower takes any action within its control
21 which causes such proceeds not to be used for
22 a qualified project. The Secretary shall pre-
23 scribe regulations specifying remedial actions
24 that may be taken (including conditions to tak-
25 ing such remedial actions) to prevent an action

1 described in the preceding sentence from caus-
2 ing a bond to fail to be an electric transmission
3 property bond.

4 “(e) MATURITY LIMITATIONS.—

5 “(1) DURATION OF TERM.—A bond shall not be
6 treated as an electric transmission property bond if
7 the maturity of such bond exceeds the maximum
8 term determined by the Secretary under paragraph
9 (2) with respect to such bond.

10 “(2) MAXIMUM TERM.—During each calendar
11 month, the Secretary shall determine the maximum
12 term permitted under this paragraph for bonds
13 issued during the following calendar month. Such
14 maximum term shall be the greater of 15 years or
15 the term which the Secretary estimates will result in
16 the present value of the obligation to repay the prin-
17 cipal on the bond being equal to 50 percent of the
18 face amount of such bond. Such present value shall
19 be determined without regard to the requirements of
20 subsection (l)(6) and using as a discount rate the
21 average annual interest rate of tax of tax-exempt ob-
22 ligations having a term of 10 years or more which
23 are issued during the month. If the term as so deter-
24 mined is not a multiple of a whole year, such term
25 shall be rounded to the next highest whole year.

1 “(f) LIMITATION ON AMOUNT OF BONDS DES-
2 IGNATED.—

3 “(1) NATIONAL LIMITATION.—There is a na-
4 tional electric transmission property bond limitation
5 of \$2,500,000,000.

6 “(2) ALLOCATION BY SECRETARY.—The Sec-
7 retary, in consultation with the Secretary of Energy,
8 shall allocate the amount described in paragraph (1)
9 among qualified projects in such manner as the Sec-
10 retary determines appropriate, except that the Sec-
11 retary may not allocate more than \$1,560,000,000
12 of the national electric transmission property bond
13 limitation to finance qualified projects of qualified
14 borrowers which are public power entities.

15 “(g) CREDIT INCLUDED IN GROSS INCOME.—Gross
16 income includes the amount of the credit allowed to the
17 taxpayer under this section (determined without regard to
18 subsection (e)) and the amount so included shall be treat-
19 ed as interest income.

20 “(h) SPECIAL RULES RELATING TO EXPENDI-
21 TURES.—

22 “(1) IN GENERAL.—An issue shall be treated as
23 meeting the requirements of this subsection if, as of
24 the date of issuance, the qualified issuer reasonably
25 expects—

1 “(A) at least 95 percent of the proceeds
2 from the sale of the issue are to be spent for
3 1 or more qualified projects within the 5-year
4 period beginning on the date of issuance of the
5 clean energy bond,

6 “(B) a binding commitment with a third
7 party to spend at least 10 percent of the pro-
8 ceeds from the sale of the issue will be incurred
9 within the 6-month period beginning on the
10 date of issuance of the clean energy bond or, in
11 the case of a clean energy bond the proceeds of
12 which are to be loaned to 2 or more qualified
13 borrowers, such binding commitment will be in-
14 curred within the 6-month period beginning on
15 the date of the loan of such proceeds to a quali-
16 fied borrower, and

17 “(C) such projects will be completed with
18 due diligence and the proceeds from the sale of
19 the issue will be spent with due diligence.

20 “(2) EXTENSION OF PERIOD.—Upon submis-
21 sion of a request prior to the expiration of the period
22 described in paragraph (1)(A), the Secretary may
23 extend such period if the qualified issuer establishes
24 that the failure to satisfy the 5-year requirement is

1 due to reasonable cause and the related projects will
2 continue to proceed with due diligence.

3 “(3) FAILURE TO SPEND REQUIRED AMOUNT
4 OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-
5 tent that less than 95 percent of the proceeds of
6 such issue are expended by the close of the 5-year
7 period beginning on the date of issuance (or if an
8 extension has been obtained under paragraph (2), by
9 the close of the extended period), the qualified issuer
10 shall redeem all of the nonqualified bonds within 90
11 days after the end of such period. For purposes of
12 this paragraph, the amount of the nonqualified
13 bonds required to be redeemed shall be determined
14 in the same manner as under section 142.

15 “(i) SPECIAL RULES RELATING TO ARBITRAGE.—A
16 bond which is part of an issue shall not be treated as an
17 electric transmission property bond unless, with respect to
18 the issue of which the bond is a part, the qualified issuer
19 satisfies the arbitrage requirements of section 148 with
20 respect to proceeds of the issue.

21 “(j) COOPERATIVE ELECTRIC COMPANY; ELECTRIC
22 TRANSMISSION PROPERTY BOND LENDER; PUBLIC
23 POWER ENTITY; QUALIFIED BORROWER.—For purposes
24 of this section—

1 “(1) COOPERATIVE ELECTRIC COMPANY.—The
2 term ‘cooperative electric company’ means a mutual
3 or cooperative electric company described in section
4 501(c)(12) or section 1381(a)(2)(C), or a not-for-
5 profit electric utility which has received a loan or
6 loan guarantee under the Rural Electrification Act.

7 “(2) ELECTRIC TRANSMISSION PROPERTY BOND
8 LENDER.—The term ‘electric transmission property
9 bond lender’ means a lender which is a cooperative
10 which is owned by, or has outstanding loans to, 100
11 or more cooperative electric companies and is in ex-
12 istence on February 1, 2002, and shall include any
13 affiliated entity which is controlled by such lender.

14 “(3) PUBLIC POWER ENTITY.—The term ‘public
15 power entity’ means a State utility with a service ob-
16 ligation, as such terms are defined in section 217 of
17 the Federal Power Act (as in effect on the date of
18 the enactment of this paragraph).

19 “(4) QUALIFIED ISSUER.—The term ‘qualified
20 issuer’ means—

21 “(A) an electric transmission property
22 bond lender,

23 “(B) a cooperative electric company, or

24 “(C) a public power entity.

1 “(5) QUALIFIED BORROWER.—The term ‘quali-
2 fied borrower’ means—

3 “(A) a mutual or cooperative electric com-
4 pany described in section 501(c)(12) or
5 1381(a)(2)(C), or

6 “(B) a public power entity.

7 “(k) SPECIAL RULES RELATING TO POOL BONDS.—
8 No portion of a pooled financing bond may be allocable
9 to any loan unless the borrower has entered into a written
10 loan commitment for such portion prior to the issue date
11 of such issue.

12 “(l) OTHER DEFINITIONS AND SPECIAL RULES.—
13 For purposes of this section—

14 “(1) BOND.—The term ‘bond’ includes any ob-
15 ligation.

16 “(2) POOLED FINANCING BOND.—The term
17 ‘pooled financing bond’ shall have the meaning given
18 such term by section 149(f)(4)(A).

19 “(3) PARTNERSHIP; S CORPORATION; AND
20 OTHER PASS-THRU ENTITIES.—

21 “(A) IN GENERAL.—Under regulations
22 prescribed by the Secretary, in the case of a
23 partnership, trust, S corporation, or other pass-
24 thru entity, rules similar to the rules of section

1 41(g) shall apply with respect to the credit al-
2 lowable under subsection (a).

3 “(B) NO BASIS ADJUSTMENT.—Rules simi-
4 lar to the rules under section 1397E(l) shall
5 apply.

6 “(4) BONDS HELD BY REGULATED INVEST-
7 MENT COMPANIES.—If any electric transmission
8 property bond is held by a regulated investment
9 company, the credit determined under subsection (a)
10 shall be allowed to shareholders of such company
11 under procedures prescribed by the Secretary.

12 “(5) RATABLE PRINCIPAL AMORTIZATION RE-
13 QUIRED.—A bond shall not be treated as an electric
14 transmission property bond unless it is part of an
15 issue which provides for an equal amount of prin-
16 cipal to be paid by the qualified issuer during each
17 calendar year that the issue is outstanding.

18 “(6) REPORTING.—Issuers of electric trans-
19 mission property bonds shall submit reports similar
20 to the reports required under section 149(e).

21 “(m) TERMINATION.—This section shall not apply
22 with respect to any bond issued after December 31,
23 2017.”.

24 (b) REPORTING.—Subsection (d) of section 6049 (re-
25 lating to returns regarding payments of interest), as

1 amended by this Act, is amended by adding at the end
2 the following new paragraph:

3 “(11) REPORTING OF CREDIT ON ELECTRIC
4 TRANSMISSION PROPERTY BONDS.—

5 “(A) IN GENERAL.—For purposes of sub-
6 section (a), the term ‘interest’ includes amounts
7 includible in gross income under section 54C(g)
8 and such amounts shall be treated as paid on
9 the credit allowance date (as defined in section
10 54C(b)(4)).

11 “(B) REPORTING TO CORPORATIONS,
12 ETC.—Except as otherwise provided in regula-
13 tions, in the case of any interest described in
14 subparagraph (A), subsection (b)(4) shall be
15 applied without regard to subparagraphs (A),
16 (H), (I), (J), (K), and (L)(i) of such subsection.

17 “(C) REGULATORY AUTHORITY.—The Sec-
18 retary may prescribe such regulations as are
19 necessary or appropriate to carry out the pur-
20 poses of this paragraph, including regulations
21 which require more frequent or more detailed
22 reporting.”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for subpart H of part IV of subchapter A of chapter 1,

1 as amended by this Act, is amended by adding at the end
2 the following new item:

“Sec. 54C. Credit to holders of electric transmission property bonds.”.

3 (d) **ISSUANCE OF REGULATIONS.**—The Secretary of
4 the Treasury shall issues regulations required under sec-
5 tion 54C of the Internal Revenue Code of 1986 (as added
6 by this section) not later than 120 days after the date
7 of the enactment of this Act.

8 (e) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to bonds issued after December
10 31, 2007.

11 **SEC. 109. EXTENSION AND MODIFICATION OF INVESTMENT**
12 **CREDIT FOR QUALIFIED FUEL CELL PROP-**
13 **ERTY, QUALIFIED MICROTURBINE PROP-**
14 **ERTY, AND SOLAR PROPERTY.**

15 (a) **EXTENSION.**—

16 (1) **QUALIFIED FUEL CELL PROPERTY.**—Sub-
17 paragraph (E) of section 48(c)(1) is amended by
18 striking “December 31, 2008” and inserting “De-
19 cember 31, 2018”.

20 (2) **QUALIFIED MICROTURBINE PROPERTY.**—
21 Subparagraph (E) of section 48(c)(2) is amended by
22 striking “December 31, 2008” and inserting “De-
23 cember 31, 2018”.

1 (3) SOLAR PROPERTY.—Subclause (II) of sec-
 2 tion 48(a)(2)(i) is amended by striking “January 1,
 3 2009” and inserting “January 1, 2019”.

4 (b) SOLAR INVESTMENT CREDIT ALLOWED FOR
 5 PUBLIC UTILITY PROPERTY.—

6 (1) IN GENERAL.—The second sentence of sec-
 7 tion 48(a)(3) of the Internal Revenue Code of 1986
 8 is amended by inserting “(other than property de-
 9 scribed in subparagraph (A)(i))” before “shall not”.

10 (2) EFFECTIVE DATE.—The amendment made
 11 by this subsection shall apply to periods after the
 12 date of the enactment of this Act, in taxable years
 13 ending after such date, under rules similar to the
 14 rules of section 48(m) of the Internal Revenue Code
 15 of 1986 (as in effect on the day before the date of
 16 the enactment of the Revenue Reconciliation Act of
 17 1990).

18 **TITLE II—REVENUE PROVISIONS**

19 **SEC. 201. TAX TREATMENT OF CONTROLLED FOREIGN COR-** 20 **PORATIONS ESTABLISHED IN TAX HAVENS.**

21 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
 22 lating to provisions affecting more than one subtitle) is
 23 amended by adding at the end the following new section:

1 **“SEC. 7875. CONTROLLED FOREIGN CORPORATIONS IN TAX**
2 **HAVENS TREATED AS DOMESTIC CORPORA-**
3 **TIONS.**

4 “(a) GENERAL RULE.—If a controlled foreign cor-
5 poration is a tax-haven CFC, then, notwithstanding sec-
6 tion 7701(a)(4), such corporation shall be treated for pur-
7 poses of this title as a domestic corporation.

8 “(b) TAX-HAVEN CFC.—For purposes of this sec-
9 tion—

10 “(1) IN GENERAL.—The term ‘tax-haven CFC’
11 means, with respect to any taxable year, a foreign
12 corporation which—

13 “(A) was created or organized under the
14 laws of a tax-haven country, and

15 “(B) is a controlled foreign corporation
16 (determined without regard to this section) for
17 an uninterrupted period of 30 days or more
18 during the taxable year.

19 “(2) EXCEPTION.—The term ‘tax-haven CFC’
20 does not include a foreign corporation for any tax-
21 able year if substantially all of its income for the
22 taxable year is derived from the active conduct of
23 trades or businesses within the country under the
24 laws of which the corporation was created or orga-
25 nized.

1 “(c) TAX-HAVEN COUNTRY.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘tax-haven coun-
4 try’ means any of the following:

“Andorra	Guernsey	Panama
Anguilla	Isle of Man	Samoa
Antigua and Barbuda	Jersey	San Marino
Aruba	Liberia	Federation of
Commonwealth of the	Principality of	Saint Christ-
Bahamas	Liechtenstein	opher
Bahrain	Republic of the	and Nevis
Barbados	Maldives	Saint Lucia
Belize	Malta	Saint Vincent
Bermuda	Republic of the	and the
British Virgin Islands	Marshall Islands	Grenadines
Cayman Islands	Mauritius	Republic of the
Cook Islands	Principality of Monaco	Seychelles
Cyprus	Montserrat	Tonga
Commonwealth of the	Republic of Nauru	Turks and Caicos
Dominica	Netherlands	Republic of
Gibraltar	Antilles	Vanuatu
Grenada	Niue	

5 “(2) SECRETARIAL AUTHORITY.—The Secretary
6 may remove or add a foreign jurisdiction from the
7 list of tax-haven countries under paragraph (1) if
8 the Secretary determines such removal or addition is
9 consistent with the purposes of this section.”.

10 (b) CONFORMING AMENDMENT.—The table of sec-
11 tions for subchapter C of chapter 80 is amended by adding
12 at the end the following new item:

“Sec. 7875. Controlled foreign corporations in tax havens treated as domestic corporations.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2008.

1 **SEC. 202. TAXATION OF INCOME OF CONTROLLED FOREIGN**
2 **CORPORATIONS ATTRIBUTABLE TO IM-**
3 **PORTED PROPERTY.**

4 (a) GENERAL RULE.—Subsection (a) of section 954
5 (defining foreign base company income) is amended by
6 striking “and” at the end of paragraph (4), by striking
7 the period at the end of paragraph (5) and inserting “,
8 and”, and by adding at the end the following new para-
9 graph:

10 “(6) imported property income for the taxable
11 year (determined under subsection (j) and reduced
12 as provided in subsection (b)(5)).”.

13 (b) DEFINITION OF IMPORTED PROPERTY IN-
14 COME.—Section 954 is amended by adding at the end the
15 following new subsection:

16 “(j) IMPORTED PROPERTY INCOME.—

17 “(1) IN GENERAL.—For purposes of subsection
18 (a)(6), the term ‘imported property income’ means
19 income (whether in the form of profits, commissions,
20 fees, or otherwise) derived in connection with—

21 “(A) manufacturing, producing, growing,
22 or extracting imported property;

23 “(B) the sale, exchange, or other disposi-
24 tion of imported property; or

25 “(C) the lease, rental, or licensing of im-
26 ported property.

1 Such term shall not include any foreign oil and gas
2 extraction income (within the meaning of section
3 907(c)) or any foreign oil related income (within the
4 meaning of section 907(c)).

5 “(2) IMPORTED PROPERTY.—For purposes of
6 this subsection—

7 “(A) IN GENERAL.—Except as otherwise
8 provided in this paragraph, the term ‘imported
9 property’ means property which is imported
10 into the United States by the controlled foreign
11 corporation or a related person.

12 “(B) IMPORTED PROPERTY INCLUDES CER-
13 TAIN PROPERTY IMPORTED BY UNRELATED
14 PERSONS.—The term ‘imported property’ in-
15 cludes any property imported into the United
16 States by an unrelated person if, when such
17 property was sold to the unrelated person by
18 the controlled foreign corporation (or a related
19 person), it was reasonable to expect that—

20 “(i) such property would be imported
21 into the United States; or

22 “(ii) such property would be used as
23 a component in other property which would
24 be imported into the United States.

1 “(C) EXCEPTION FOR PROPERTY SUBSE-
2 QUENTLY EXPORTED.—The term ‘imported
3 property’ does not include any property which is
4 imported into the United States and which—

5 “(i) before substantial use in the
6 United States, is sold, leased, or rented by
7 the controlled foreign corporation or a re-
8 lated person for direct use, consumption,
9 or disposition outside the United States; or

10 “(ii) is used by the controlled foreign
11 corporation or a related person as a com-
12 ponent in other property which is so sold,
13 leased, or rented.

14 “(D) EXCEPTION FOR CERTAIN AGRICUL-
15 TURAL COMMODITIES.—The term ‘imported
16 property’ does not include any agricultural com-
17 modity which is not grown in the United States
18 in commercially marketable quantities.

19 “(3) DEFINITIONS AND SPECIAL RULES.—

20 “(A) IMPORT.—For purposes of this sub-
21 section, the term ‘import’ means entering, or
22 withdrawal from warehouse, for consumption or
23 use. Such term includes any grant of the right
24 to use intangible property (as defined in section
25 936(h)(3)(B)) in the United States.

1 “(B) UNITED STATES.—For purposes of
2 this subsection, the term ‘United States’ in-
3 cludes the Commonwealth of Puerto Rico, the
4 Virgin Islands of the United States, Guam,
5 American Samoa, and the Commonwealth of
6 the Northern Mariana Islands.

7 “(C) UNRELATED PERSON.—For purposes
8 of this subsection, the term ‘unrelated person’
9 means any person who is not a related person
10 with respect to the controlled foreign corpora-
11 tion.

12 “(D) COORDINATION WITH FOREIGN BASE
13 COMPANY SALES INCOME.—For purposes of this
14 section, the term ‘foreign base company sales
15 income’ shall not include any imported property
16 income.”.

17 (c) SEPARATE APPLICATION OF LIMITATIONS ON
18 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
19 COME.—

20 (1) IN GENERAL.—Paragraph (1) of section
21 904(d) (relating to separate application of section
22 with respect to certain categories of income) is
23 amended by striking “and” at the end of subpara-
24 graph (A), by redesignating subparagraph (B) as

1 subparagraph (C), and by inserting after subpara-
2 graph (A) the following new subparagraph:

3 “(B) imported property income, and”.

4 (2) IMPORTED PROPERTY INCOME DEFINED.—

5 Paragraph (2) of section 904(d) is amended by re-
6 designating subparagraphs (I) and (J) as subpara-
7 graphs (J) and (K), respectively, and by inserting
8 after subparagraph (H) the following new subpara-
9 graph:

10 “(I) IMPORTED PROPERTY INCOME.—The
11 term ‘imported property income’ means any in-
12 come received or accrued by any person which
13 is of a kind which would be imported property
14 income (as defined in section 954(j)).”.

15 (3) CONFORMING AMENDMENT.—Clause (ii) of
16 section 904(d)(2)(A) is amended by inserting “or
17 imported property income” after “passive category
18 income”.

19 (d) TECHNICAL AMENDMENTS.—

20 (1) Clause (iii) of section 952(c)(1)(B) (relating
21 to certain prior year deficits may be taken into ac-
22 count) is amended—

23 (A) by redesignating subclauses (II), (III),
24 (IV), and (V) as subclauses (III), (IV), (V), and
25 (VI), and

1 (B) by inserting after subclause (I) the fol-
2 lowing new subclause:

3 “(II) imported property in-
4 come,”.

5 (2) Paragraph (5) of section 954(b) (relating to
6 deductions to be taken into account) is amended by
7 striking “and the foreign base company oil related
8 income” and inserting “the foreign base company oil
9 related income, and the imported property income”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years of foreign corpora-
12 tions beginning after the date of the enactment of this
13 Act, and to taxable years of United States shareholders
14 within which or with which such taxable years of such for-
15 eign corporations end.

16 **SEC. 203. MODIFICATION OF EFFECTIVE DATE OF LEASING**
17 **PROVISIONS OF THE AMERICAN JOBS CRE-**
18 **ATION ACT OF 2004.**

19 (a) LEASES TO FOREIGN ENTITIES.—Section 849(b)
20 of the American Jobs Creation Act of 2004 is amended
21 by adding at the end the following new paragraph:

22 “(5) LEASES TO FOREIGN ENTITIES.—In the
23 case of tax-exempt use property leased to a tax-ex-
24 empt entity which is a foreign person or entity, the
25 amendments made by this part shall apply to taxable

1 years beginning after December 31, 2006, with re-
 2 spect to leases entered into on or before March 12,
 3 2004.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall take effect as if included in the enact-
 6 ment of the American Jobs Creation Act of 2004.

7 **SEC. 204. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 8 **TRINE.**

9 (a) IN GENERAL.—Section 7701 is amended by re-
 10 designating subsection (o) as subsection (p) and by insert-
 11 ing after subsection (n) the following new subsection:

12 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE
 13 DOCTRINE; ETC.—

14 “(1) GENERAL RULES.—

15 “(A) IN GENERAL.—In any case in which
 16 a court determines that the economic substance
 17 doctrine is relevant for purposes of this title to
 18 a transaction (or series of transactions), such
 19 transaction (or series of transactions) shall have
 20 economic substance only if the requirements of
 21 this paragraph are met.

22 “(B) DEFINITION OF ECONOMIC SUB-
 23 STANCE.—For purposes of subparagraph (A)—

24 “(i) IN GENERAL.—A transaction has
 25 economic substance only if—

1 “(I) the transaction changes in a
2 meaningful way (apart from Federal
3 tax effects) the taxpayer’s economic
4 position, and

5 “(II) the taxpayer has a substan-
6 tial nontax purpose for entering into
7 such transaction and the transaction
8 is a reasonable means of accom-
9 plishing such purpose.

10 In applying subclause (II), a purpose of
11 achieving a financial accounting benefit
12 shall not be taken into account in deter-
13 mining whether a transaction has a sub-
14 stantial nontax purpose if the origin of
15 such financial accounting benefit is a re-
16 duction of income tax.

17 “(ii) SPECIAL RULE WHERE TAX-
18 PAYER RELIES ON PROFIT POTENTIAL.—A
19 transaction shall not be treated as having
20 economic substance by reason of having a
21 potential for profit unless—

22 “(I) the present value of the rea-
23 sonably expected pre-tax profit from
24 the transaction is substantial in rela-
25 tion to the present value of the ex-

1 pected net tax benefits that would be
2 allowed if the transaction were re-
3 spected, and

4 “(II) the reasonably expected
5 pre-tax profit from the transaction ex-
6 ceeds a risk-free rate of return.

7 “(C) TREATMENT OF FEES AND FOREIGN
8 TAXES.—Fees and other transaction expenses
9 and foreign taxes shall be taken into account as
10 expenses in determining pre-tax profit under
11 subparagraph (B)(ii).

12 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
13 TAX-INDIFFERENT PARTIES.—

14 “(A) SPECIAL RULES FOR FINANCING
15 TRANSACTIONS.—The form of a transaction
16 which is in substance the borrowing of money
17 or the acquisition of financial capital directly or
18 indirectly from a tax-indifferent party shall not
19 be respected if the present value of the deduc-
20 tions to be claimed with respect to the trans-
21 action is substantially in excess of the present
22 value of the anticipated economic returns of the
23 person lending the money or providing the fi-
24 nancial capital. A public offering shall be treat-
25 ed as a borrowing, or an acquisition of financial

1 capital, from a tax-indifferent party if it is rea-
2 sonably expected that at least 50 percent of the
3 offering will be placed with tax-indifferent par-
4 ties.

5 “(B) ARTIFICIAL INCOME SHIFTING AND
6 BASIS ADJUSTMENTS.—The form of a trans-
7 action with a tax-indifferent party shall not be
8 respected if—

9 “(i) it results in an allocation of in-
10 come or gain to the tax-indifferent party in
11 excess of such party’s economic income or
12 gain, or

13 “(ii) it results in a basis adjustment
14 or shifting of basis on account of over-
15 stating the income or gain of the tax-indif-
16 ferent party.

17 “(3) DEFINITIONS AND SPECIAL RULES.—For
18 purposes of this subsection—

19 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
20 The term ‘economic substance doctrine’ means
21 the common law doctrine under which tax bene-
22 fits under subtitle A with respect to a trans-
23 action are not allowable if the transaction does
24 not have economic substance or lacks a business
25 purpose.

1 “(B) TAX-INDIFFERENT PARTY.—The
2 term ‘tax-indifferent party’ means any person
3 or entity not subject to tax imposed by subtitle
4 A. A person shall be treated as a tax-indifferent
5 party with respect to a transaction if the items
6 taken into account with respect to the trans-
7 action have no substantial impact on such per-
8 son’s liability under subtitle A.

9 “(C) EXCEPTION FOR PERSONAL TRANS-
10 ACTIONS OF INDIVIDUALS.—In the case of an
11 individual, this subsection shall apply only to
12 transactions entered into in connection with a
13 trade or business or an activity engaged in for
14 the production of income.

15 “(D) TREATMENT OF LESSORS.—In apply-
16 ing paragraph (1)(B)(ii) to the lessor of tan-
17 gible property subject to a lease—

18 “(i) the expected net tax benefits with
19 respect to the leased property shall not in-
20 clude the benefits of—

21 “(I) depreciation,

22 “(II) any tax credit, or

23 “(III) any other deduction as
24 provided in guidance by the Secretary,
25 and

1 “(ii) subclause (II) of paragraph
2 (1)(B)(ii) shall be disregarded in deter-
3 mining whether any of such benefits are al-
4 lowable.

5 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
6 FECTED.—Except as specifically provided in this
7 subsection, the provisions of this subsection shall not
8 be construed as altering or supplanting any other
9 rule of law, and the requirements of this subsection
10 shall be construed as being in addition to any such
11 other rule of law.

12 “(5) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary or ap-
14 propriate to carry out the purposes of this sub-
15 section. Such regulations may include exemptions
16 from the application of this subsection.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to transactions entered into after
19 the date of the enactment of this Act.

20 **SEC. 205. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
21 **UTABLE TO TRANSACTIONS LACKING ECO-**
22 **NOMIC SUBSTANCE, ETC.**

23 (a) IN GENERAL.—Subchapter A of chapter 68 is
24 amended by inserting after section 6662A the following
25 new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
5 noneconomic substance transaction understatement for
6 any taxable year, there shall be added to the tax an
7 amount equal to 40 percent of the amount of such under-
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-
11 stituting ‘20 percent’ for ‘40 percent’ with respect to the
12 portion of any noneconomic substance transaction under-
13 statement with respect to which the relevant facts affect-
14 ing the tax treatment of the item are adequately disclosed
15 in the return or a statement attached to the return.

16 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
17 DERSTATEMENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘noneconomic
19 substance transaction understatement’ means any
20 amount which would be an understatement under
21 section 6662A(b)(1) if section 6662A were applied
22 by taking into account items attributable to non-
23 economic substance transactions rather than items
24 to which section 6662A would apply without regard
25 to this paragraph.

1 “(2) NONECONOMIC SUBSTANCE TRANS-
2 ACTION.—The term ‘noneconomic substance trans-
3 action’ means any transaction if—

4 “(A) there is a lack of economic substance
5 (within the meaning of section 7701(o)(1)) for
6 the transaction giving rise to the claimed ben-
7 efit or the transaction was not respected under
8 section 7701(o)(2), or

9 “(B) the transaction fails to meet the re-
10 quirements of any similar rule of law.

11 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
12 ALTY.—

13 “(1) IN GENERAL.—If the 1st letter of pro-
14 posed deficiency which allows the taxpayer an oppor-
15 tunity for administrative review in the Internal Rev-
16 enue Service Office of Appeals has been sent with
17 respect to a penalty to which this section applies,
18 only the Commissioner of Internal Revenue may
19 compromise all or any portion of such penalty.

20 “(2) APPLICABLE RULES.—The rules of para-
21 graphs (2) and (3) of section 6707A(d) shall apply
22 for purposes of paragraph (1).

23 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-
2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements
under section 6662 and other special rules, see section
6662A(e).

“(2) For reporting of penalty imposed under this section
to the Securities and Exchange Commission, see section
6707A(e).”.

4 (b) COORDINATION WITH OTHER UNDERSTATE-
5 MENTS AND PENALTIES.—

6 (1) The second sentence of section
7 6662(d)(2)(A) is amended by inserting “and without
8 regard to items with respect to which a penalty is
9 imposed by section 6662B” before the period at the
10 end.

11 (2) Subsection (e) of section 6662A is amend-
12 ed—

13 (A) in paragraph (1), by inserting “and
14 noneconomic substance transaction understate-
15 ments” after “reportable transaction under-
16 statements” both places it appears,

17 (B) in paragraph (2)(A), by inserting “and
18 a noneconomic substance transaction under-
19 statement” after “reportable transaction under-
20 statement”,

21 (C) in paragraph (2)(B), by inserting
22 “6662B or” before “6663”,

1 (D) in paragraph (2)(C)(i), by inserting
2 “or section 6662B” before the period at the
3 end,

4 (E) in paragraph (2)(C)(ii), by inserting
5 “and section 6662B” after “This section”,

6 (F) in paragraph (3), by inserting “or non-
7 economic substance transaction understatement”
8 after “reportable transaction understatement”,
9 and

10 (G) by adding at the end the following new
11 paragraph:

12 “(4) NONECONOMIC SUBSTANCE TRANSACTION
13 UNDERSTATEMENT.—For purposes of this sub-
14 section, the term ‘noneconomic substance trans-
15 action understatement’ has the meaning given such
16 term by section 6662B(c).”.

17 (3) Subsection (e) of section 6707A is amend-
18 ed—

19 (A) by striking “or” at the end of subpara-
20 graph (B), and

21 (B) by striking subparagraph (C) and in-
22 serting the following new subparagraphs:

23 “(C) is required to pay a penalty under
24 section 6662B with respect to any noneconomic
25 substance transaction, or

1 with respect to which the requirement of section
2 6664(d)(2)(A) is not met, or

3 “(2) any noneconomic substance transaction
4 understatement (as defined in section 6662B(c)).”,
5 and

6 (2) by inserting “And Noneconomic Substance
7 Transactions” in the heading thereof after “Trans-
8 actions”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to transactions after the date of
11 the enactment of this Act in taxable years ending after
12 such date.

○