

111TH CONGRESS
1ST SESSION

S. 1637

To amend the Internal Revenue Code of 1986 to improve and extend certain energy-related tax provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. SNOWE (for herself, Mrs. FEINSTEIN, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to improve and extend certain energy-related tax provisions, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Expanding Building Efficiency Incentives Act of 2009”.

7 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
8 wise expressly provided, whenever in this Act an amend-
9 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; amendment of 1986 Code; table of contents.

Sec. 2. Increase in, and extension of, new energy efficient home credit.

Sec. 3. Modification of deduction for energy efficient commercial buildings.

Sec. 4. Energy ratings of non-business property.

Sec. 5. Credit for home performance auditor certifications.

6 **SEC. 2. INCREASE IN, AND EXTENSION OF, NEW ENERGY**
7 **EFFICIENT HOME CREDIT.**

8 (a) NEW TIER; CREDIT AMOUNT FOR NEW TIER.—

9 (1) NEW TIER.—Subsection (c) of section 45L
10 is amended to read as follows:

11 “(c) ENERGY SAVINGS REQUIREMENTS.—

12 “(1) IN GENERAL.—A dwelling unit meets the
13 energy saving requirements of this subsection if such
14 unit is—

15 “(A) described in paragraph (2),

16 “(B) described in paragraph (3),

17 “(C) a manufactured home described in
18 paragraph (4), or

19 “(D) a manufactured home described in
20 paragraph (5).

21 “(2) DWELLING UNIT DESCRIBED IN PARA-
22 GRAPH (2).—A dwelling unit is described in this
23 paragraph if such unit is certified—

1 “(A) to have a level of annual heating and
2 cooling energy consumption which is at least 50
3 percent below the annual level of heating and
4 cooling energy consumption of a comparable
5 dwelling unit—

6 “(i) which is constructed in accord-
7 ance with the standards of chapter 4 of the
8 2003 International Energy Conservation
9 Code, as such Code (including supple-
10 ments) is in effect on the date of the en-
11 actment of the Energy Tax Incentives Act
12 of 2005, and

13 “(ii) for which the heating and cooling
14 equipment efficiencies correspond to the
15 minimum allowed under the regulations es-
16 tablished by the Department of Energy
17 pursuant to the National Appliance Energy
18 Conservation Act of 1987 and in effect at
19 the time of completion of construction, and

20 “(B) to have building envelope component
21 improvements account for at least 1/5 of such
22 50 percent.

23 The Secretary, in consultation with the Secretary of
24 Energy shall provide by regulation for the applica-
25 tion of this paragraph in the case of a dwelling unit

1 in a multifamily building that is more than 3 stories
2 above grade, or in any other building that is not
3 within the scope of such chapter 4. If, upon the ac-
4 quisition of such unit by any person described in
5 subsection (a)(1)(A)(ii)(I), the amount of the credit
6 allowed under this section with respect to such unit
7 shall be disclosed to such person.

8 “(3) DWELLING UNIT DESCRIBED IN PARA-
9 GRAPH (3).—A dwelling unit is described in this
10 paragraph if such unit is certified—

11 “(A) to have a level of annual total energy
12 consumption (including heating, cooling, water
13 heating, lighting, and appliance energy use)
14 which is at least 50 percent below the annual
15 level of total energy consumption of a com-
16 parable dwelling unit which is constructed in
17 accordance with the 2004 Supplement of the
18 2003 International Energy Conservation Code,
19 and

20 “(B) to have building envelope component
21 improvements account for at least 1/5 of such
22 50 percent, or

23 “(4) MANUFACTURED HOME DESCRIBED IN
24 PARAGRAPH (4).—A manufactured home is described
25 in this paragraph if such manufactured home con-

1 forms to Federal Manufactured Home Construction
2 and Safety Standards (part 3280 of title 24, Code
3 of Federal Regulations) and meets the requirements
4 of a dwelling unit described in paragraph (2).

5 “(5) MANUFACTURED HOME DESCRIBED IN
6 PARAGRAPH (5).—A manufactured home is described
7 in this paragraph if such manufactured home con-
8 forms to Federal Manufactured Home Construction
9 and Safety Standards (part 3280 of title 24, Code
10 of Federal Regulations) and—

11 “(A) meets the requirements of—

12 “(i) a dwelling unit described in para-
13 graph (2), applied by substituting ‘30 per-
14 cent’ for ‘50 percent’ both places it ap-
15 pears therein and by substituting ‘1/3’ for
16 ‘1/5’ in subparagraph (B) thereof, or

17 “(ii) a dwelling unit described in para-
18 graph (3), or

19 “(B) meets the requirements established
20 by the Administrator of the Environmental Pro-
21 tection Agency under the Energy Star Labeled
22 Homes program as in effect on the date of the
23 enactment of the Expanding Building Effi-
24 ciency Incentives Act of 2009, or

1 “(C) meets the requirements under the
2 Energy Star Labeled Homes program estab-
3 lished after the date of the enactment of the
4 Expanding Building Efficiency Incentives Act
5 of 2009.”.

6 (2) CREDIT AMOUNT FOR NEW TIER.—Para-
7 graph (2) of section 45L(a) is amended to read as
8 follows:

9 “(2) APPLICABLE AMOUNT.—For purposes of
10 paragraph (1), the applicable amount is an amount
11 equal to—

12 “(A) in the case of a dwelling unit de-
13 scribed in paragraph (2) or (4) of subsection
14 (c), \$2,000,

15 “(B) in the case of a dwelling unit de-
16 scribed in paragraph (3) of subsection (c),
17 \$5,000,

18 “(C) in the case of a manufactured home
19 described in paragraph (5)(A)(i) or (5)(B) of
20 subsection (c), \$1,500, and

21 “(D) in the case of a manufactured home
22 described in paragraph (5)(A)(ii) or (5)(C) of
23 subsection (c), \$2,500.

1 Nothing in this section shall permit the same dwell-
2 ing unit or manufactured home to qualify for more
3 than one applicable amount.”.

4 (b) CREDIT AVAILABLE FOR RENTAL UNITS,
5 OWNER-BUILDERS, AND QUALIFIED LOW-INCOME BUILD-
6 INGS; CREDIT AMOUNT FOR QUALIFIED LOW-INCOME
7 BUILDINGS.—

8 (1) IN GENERAL.—Paragraph (1) of section
9 45L(a) is amended to read as follows:

10 “(1) IN GENERAL.—For purposes of section
11 38—

12 “(A) in the case of an eligible contractor,
13 the new energy efficient home credit for the
14 taxable year is the applicable amount for each
15 qualified new energy efficient home which is—

16 “(i) constructed by the eligible con-
17 tractor, and

18 “(ii)(I) acquired by a person from
19 such eligible contractor and used by any
20 person as a residence during the taxable
21 year, or

22 “(II) used by such eligible contractor
23 as a residence during the taxable year, and

24 “(B) in the case of a taxpayer, the new en-
25 ergy efficient home credit for the taxable year

1 is the applicable amount for each qualified new
2 energy efficient home which is in a qualified
3 low-income building (as defined in section
4 42(c)(2))—

5 “(i) placed in service by the taxpayer
6 during the taxable year, and

7 “(ii) for which such taxpayer is al-
8 lowed a credit under section 42 or a
9 subaward under section 1602(c) of the
10 American Recovery and Reinvestment Tax
11 Act of 2009.”.

12 (2) CREDIT AMOUNT.—Paragraph (2) of section
13 45L(a), as amended by this section, is amended by
14 adding at the end the following new flush sentence:
15 “In the case of a dwelling unit in a qualified low-
16 income building (as so defined), the applicable dollar
17 amount for such a dwelling unit described in 1 of
18 the preceding subparagraphs shall be equal to 150
19 percent of the dollar amount otherwise specified in
20 such preceding subparagraph, except that if the
21 credit under section 42 with respect to such unit is
22 determined by applying section 42(d)(5)(B), then
23 the applicable dollar amount shall be 115 percent of
24 such dollar amount so specified.”.

1 (3) NO BASIS ADJUSTMENT.—Section 45L(e) is
2 amended by inserting “(other than a qualified low-
3 income building)” after “any property”.

4 (c) CERTIFICATION METHOD FOR HIGH RISE MUL-
5 TIFAMILY AND MIXED USE BUILDINGS.—Section
6 45L(d)(1) is amended by inserting “, and in the case of
7 high rise multifamily and mixed use buildings, after exam-
8 ining the methods required for such buildings under sec-
9 tion 179D” after “the Secretary of Energy”.

10 (d) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-
11 IMUM TAX.—Subparagraph (B) of section 38(c)(4) is
12 amended—

13 (1) by redesignating clauses (vi), (vii), and (viii)
14 as clauses (vii), (viii), and (ix), respectively, and

15 (2) by inserting after clause (v) the following
16 new clause:

17 “(vi) the credit determined under sec-
18 tion 45L,”.

19 (e) EXTENSION.—Subsection (g) of section 45L is
20 amended to read as follows:

21 “(g) TERMINATION.—This section shall not apply to
22 the acquisition of any qualified new energy efficient
23 home—

24 “(1) described in subsection (a)(2)(A) after De-
25 cember 31, 2012,

1 “(2) described in subsection (a)(2)(B) after De-
2 cember 31, 2013,

3 “(3) described in subsection (a)(2)(C) after De-
4 cember 31, 2010, and

5 “(4) described in subsection (a)(2)(D) after De-
6 cember 31, 2013.”.

7 (f) EFFECTIVE DATES.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply to homes constructed and ac-
10 quired or placed in service after December 31, 2008.

11 (2) AMT.—The amendments made by sub-
12 section (d) shall apply to credits determined under
13 section 45L of the Internal Revenue Code of 1986
14 in taxable years beginning after December 31, 2008,
15 and to carrybacks of such credits.

16 **SEC. 3. MODIFICATION OF DEDUCTION FOR ENERGY EFFI-
17 CIENT COMMERCIAL BUILDINGS.**

18 (a) INCREASE IN MAXIMUM AMOUNT OF DEDUC-
19 TION.—

20 (1) IN GENERAL.—Subparagraph (A) of section
21 179D(b)(1) is amended by striking “\$1.80” and in-
22 serting “\$3.00”.

23 (2) PARTIAL ALLOWANCE.—Paragraph (1) of
24 section 179D(d) is amended to read as follows:

25 “(1) PARTIAL ALLOWANCE.—

1 “(A) IN GENERAL.—Except as provided in
2 subsection (f), if—

3 “(i) the requirement of subsection
4 (c)(1)(D) is not met, but

5 “(ii) there is a certification in accord-
6 ance with paragraph (6) that—

7 “(I) any system referred to in
8 subsection (c)(1)(C) satisfies the en-
9 ergy-savings targets established by the
10 Secretary under subparagraph (B)
11 with respect to such system, or

12 “(II) the systems referred to in
13 subsection (c)(1)(C)(ii) and subsection
14 (c)(1)(C)(iii) together satisfy the en-
15 ergy-savings targets established by the
16 Secretary under subparagraph (B)
17 with respect to such systems,

18 then the requirement of subsection (c)(1)(D)
19 shall be treated as met with respect to such sys-
20 tem or systems, and the deduction under sub-
21 section (a) shall be allowed with respect to en-
22 ergy efficient commercial building property in-
23 stalled as part of such system and as part of
24 a plan to meet such targets, except that sub-
25 section (b) shall be applied to such property de-

1 scribed in clause (ii)(I) by substituting ‘\$1.00’
2 for ‘\$3.00’ and to such property described in
3 clause (ii)(II) by substituting ‘\$2.20’ for
4 ‘\$3.00’.

5 “(B) REGULATIONS.—

6 “(i) IN GENERAL.—The Secretary,
7 after consultation with the Secretary of
8 Energy, shall establish a target for each
9 system described in subsection (c)(1)(C)
10 which, if such targets were met for all such
11 systems, the building would meet the re-
12 quirements of subsection (c)(1)(D).

13 “(ii) COMBINED SYSTEMS.—The Sec-
14 retary, after consultation with the Sec-
15 retary of Energy, shall establish not later
16 than 6 months after the date of the enact-
17 ment of the Expanding Building Efficiency
18 Incentives Act of 2009 a prescriptive par-
19 tial compliance pathway for combined en-
20 velope and mechanical system performance
21 that details the appropriate components,
22 efficiency levels, or other relevant informa-
23 tion for which the required level of com-
24 bined savings in both categories can be
25 deemed to have been achieved.”.

1 (b) DENIAL OF DOUBLE BENEFIT.—Section 179D is
2 amended by redesignating subsections (g) and (h) as sub-
3 sections (h) and (i), respectively, and by inserting after
4 subsection (f) the following new subsection:

5 “(g) COORDINATION WITH NEW ENERGY EFFICIENT
6 HOME CREDIT.—No deduction shall be allowed under this
7 section with respect to any building or dwelling unit with
8 respect to which a credit under section 45L was allowed.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to property placed in service in
11 taxable years beginning after the date of the enactment
12 of this Act.

13 **SEC. 4. ENERGY RATINGS OF NON-BUSINESS PROPERTY.**

14 (a) IN GENERAL.—Subpart A of part IV of sub-
15 chapter A of chapter 1 is amended by inserting after sec-
16 tion 25D the following new section:

17 **“SEC. 25E. ENERGY RATINGS OF NON-BUSINESS PROPERTY.**

18 “(a) IN GENERAL.—In the case of an individual,
19 there shall be allowed as a credit against the tax imposed
20 by this chapter for the taxable year an amount equal to
21 the amount paid or incurred by the taxpayer for a quali-
22 fied home energy rating conducted during such taxable
23 year.

1 “(b) LIMITATION.—The amount allowed as a credit
2 under subsection (a) with respect to any taxpayer for any
3 taxable year shall not exceed \$200.

4 “(c) QUALIFIED HOME ENERGY RATING.—For pur-
5 poses of this section, the term ‘qualified home energy rat-
6 ing’ means a home energy rating conducted with respect
7 to any residence of the taxpayer by a home performance
8 auditor certified by a provider accredited by the Building
9 Performance Institute (BPI), the Residential Energy
10 Services Network (RESNET), or equivalent rating system
11 as determined by the Secretary of Energy.

12 “(d) TERMINATION.—This section shall not apply
13 with respect to any rating conducted after December 31,
14 2011.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for subpart A of part IV of subchapter A chapter 1 is
17 amended by inserting after the item relating to section
18 25D the following new item:

“Sec. 25E. Energy ratings of non-business property.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to amounts paid or incurred in tax-
21 able years beginning after the date of the enactment of
22 this Act.

1 **SEC. 5. CREDIT FOR HOME PERFORMANCE AUDITOR CER-**
2 **TIFICATIONS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
4 chapter A of chapter 1 is amended by adding at the end
5 the following new section:

6 **“SEC. 45R. HOME PERFORMANCE AUDITOR CERTIFICATION**
7 **CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the
9 home performance auditor certification credit determined
10 under this section for any taxable year is an amount equal
11 to the qualified training and certification costs paid or in-
12 curred by the taxpayer which may be taken into account
13 for such taxable year.

14 “(b) QUALIFIED TRAINING AND CERTIFICATION
15 COSTS.—

16 “(1) IN GENERAL.—The term ‘qualified train-
17 ing and certification costs’ means costs paid or in-
18 curred for training which is required for the tax-
19 payer or employees of the taxpayer to be certified as
20 home performance auditors for purposes of providing
21 qualified home energy ratings under section 25E(c).

22 “(2) LIMITATION.—The qualified training and
23 certification costs taken into account under sub-
24 section (a)(1) for the taxable year with respect to
25 any individual shall not exceed \$500 reduced by the
26 amount of the credit allowed under subsection (a)(1)

1 to the taxpayer (or any predecessor) with respect to
2 such individual for all prior taxable years.

3 “(3) YEAR COSTS TAKEN INTO ACCOUNT.—
4 Qualified training and certifications costs with re-
5 spect to any individual shall not be taken into ac-
6 count under subsection (a)(1) before the taxable
7 year in which the individual with respect to whom
8 such costs are paid or incurred has performed 25
9 qualified home energy ratings under section 25E(c).

10 “(c) SPECIAL RULES.—

11 “(1) AGGREGATION RULES.—For purposes of
12 this section, all persons treated as a single employer
13 under subsections (a) and (b) of section 52 shall be
14 treated as 1 person.

15 “(2) DENIAL OF DOUBLE BENEFIT.—

16 “(A) IN GENERAL.—No deduction shall be
17 allowed for that portion of the expenses other-
18 wise allowable as a deduction for the taxable
19 year which is equal to the amount taken into
20 account under subsection (a) for such taxable
21 year.

22 “(B) AMOUNT PREVIOUSLY DEDUCTED.—

23 No credit shall be allowed under subsection (a)
24 with respect to any amount for which a deduc-

1 tion has been allowed in any preceding taxable
2 year.”.

3 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
4 NESS CREDIT.—Section 38(b) is amended by striking
5 “plus” at the end of paragraph (34), by striking the period
6 at the end of paragraph (35) and inserting “plus”, and
7 by adding at the end the following new paragraph:

8 “(36) the home performance auditor certifi-
9 cation credit determined under section 45R(a).”.

10 (c) CONFORMING AMENDMENT.—The table of sec-
11 tions for subpart D of part IV of subchapter A of chapter
12 1 is amended by inserting after the item relating to section
13 45Q the following new item:

 “Sec. 45R. Home performance auditor certification credit.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to amounts paid or incurred after
16 the date of the enactment of this Act.