

Joint Committee on Taxation  
September 25, 1980  
JCX-51-80

S. 3006--Industrial Energy Efficiency and  
Fuel Conversion Tax Incentive Act of 1980

Present law

The Energy Tax Act of 1978 provided a 10-percent nonrefundable energy tax credit, through December 31, 1982, for specified items of energy conservation property that are used to increase energy efficiency or to reduce the amount of energy consumed in existing processes at existing facilities. The items which specifically were made eligible for the credit include, among others, recuperators, heat wheels, heat exchangers and automatic energy control systems. The Secretary is authorized to specify additional items of qualifying property. That authority has not yet been exercised, and in 1980 Congress added standards that the Secretary must use in exercising the authority to add items to the list.

Alternative energy property was made eligible for a 10-percent nonrefundable energy credit for replacement boilers and burners that use an alternate substance, i.e., oil, natural gas, or one of their products, and equipment that employs an alternate substance to make a synthetic liquid, gaseous or solid fuel, a feedstock and related handling and pollution control equipment. This credit also expires after December 31, 1982, but for taxpayers with projects that require substantial planning and production periods, the expiration date is waived if certain, specified affirmative commitments have been made in a timely fashion.

Recycling equipment also is eligible for the energy investment credit at a 10-percent rate.

These credits are not available for public utility property. In situations when an industrial development bond has been used to finance acquisition of qualified energy property, half of the energy credit will be allowable. Rules to prevent the use of Federal tax or other incentives for energy purposes were enacted as part of the Windfall Profit Tax bill.

Explanation of provision

The bill would increase the energy investment credit to 20 percent for alternative energy property (except geothermal and ocean thermal property), specially defined energy property and recycling equipment as defined in section 48(L) of the Code. The bill also creates a new category of investment property, called Qualified Industrial Energy Property (QIEP), which will be eligible for a 20-percent investment credit.

QIEP must be an integral part of a modification to, or replacement of, all or part of an existing manufacturing, production or extraction facility, commercial or industrial process, or item of equipment. The modification or replacement must not increase the total amount of natural gas or oil (other than waste gases and petroleum coke) consumed by the facility, process or equipment per unit of output, and the QIEP must result in the use of less energy per unit of output by the facility, process or equipment, or in conversion to the use of an alternate substance or feedstock.

The availability of the credit also is dependent upon the amount of energy saving produced by the QIEP. There is a threshold below which no credit would be allowable. If the energy saving is less than \$11 per barrel of oil equivalent (BOE), there would be no credit. When the energy saving is more than \$55 per BOE, the credit amount would be \$55 multiplied by the amount of saving. From \$11 through \$55 BOE, the 20-percent energy investment credit would apply.

The QIEP credit could not exceed tax liability and would be subject to a 3-year carryback and 4-year carryforward. In each year in which a credit is available, it may be applied against the excess of tax liability over other tax credits from other Code sections (see below) by applying QIEP credits earned in the current year first and then by applying carryover credits, starting with such credits from the earliest carryover year. These credits would be computed after taking into account the credits for tax withheld at the source on nonresident aliens and foreign corporations (sec. 32), the credit for taxes on foreign countries and possessions (sec. 33), the credit for the elderly (sec. 37), the credit for expenses of work incentive programs (sec. 40), the credit for political contributions (sec. 41), the credit for dependent care expenses (sec. 44A), the credit for employment of new employees (sec. 44B), and the credit for residential energy expenditures (sec. 44C). Certain penalty and surtaxes, including the minimum taxes on tax preferences, the tax on premature distributions from H.R. 10 plans, the tax on lump-sum pension plan distributions, and others, are disregarded in computing the limitation on the amount of the credit.

Qualified property must be new tangible property for which depreciation is allowable, have a useful life of 3 or more years and be directly related and utilized for energy reduction or conversion. Qualified property must be installed in or connection with an existing facility. Existing can mean a facility that was completed before December 31, 1980, an industrial or commercial process carried on as of December 31, 1980, and an item of equipment placed in service before December 31, 1980.

No property is eligible for the QIEP credit, if the regular investment credit is claimed, or if the replaced property is not retired (except for standby use) or the replacement is not on the same or an adjacent site.

The rules governing eligibility for the regular investment credit would apply with a few modifications. The exclusion of a building and its structural components would be disregarded. Boilers fueled by oil or gas would be eligible for QIEP, notwithstanding their ineligibility under the regular credit. There would be no partial credits; all qualified property with a useful life of 3 or more years would receive the QIEP credit.

Public utility property would not be eligible. Basis would be reduced by the direct or indirect use of grant funds from the United States. The credit rate would be halved if proceeds from the issue of an industrial development bond are used in whole or in part to finance acquisition of QIEP.

The affirmative commitment rule enacted in the Windfall Profit Excise Tax Act of 1980 also would apply with later date limitations.

#### Effective date

The amendments with respect to QIEP would apply for property placed in service before January 1, 1987, and which would have been acquired by the taxpayer, or for which construction, reconstruction or erection would have begun after July 31, 1980.

For QIEP to which the affirmative commitment rule would apply, the credit would apply to property placed in service before January 1, 1995.

The amendment to increase the energy investment tax credit to 20 percent for alternative energy property, specially defined energy property and recycling equipment would apply to taxable years ending on or after the date of enactment.