

111TH CONGRESS
1ST SESSION

H. R. 3746

To amend the Internal Revenue Code of 1986 to provide tax incentives for making homes more water-efficient, for building new water-efficient homes, for public water conservation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Ms. BERKLEY (for herself and Ms. TITUS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for making homes more water-efficient, for building new water-efficient homes, for public water conservation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Efficiency and
5 Conservation Investment Act of 2009”.

6 **SEC. 2. RESIDENTIAL WATER EFFICIENCY CREDIT.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code is

1 amended by inserting after section 30D the following new
2 section:

3 **“SEC. 30E. RESIDENTIAL WATER EFFICIENCY CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
5 dividual, there shall be allowed as a credit against the tax
6 imposed by this chapter for the taxable year an amount
7 equal to 50 percent of the qualified water efficiency prop-
8 erty expenditures paid or incurred during such taxable
9 year.

10 “(b) LIMITATION.—The credit allowed under this sec-
11 tion with respect to any taxpayer for any taxable year shall
12 not exceed \$750.

13 “(c) QUALIFIED WATER EFFICIENCY PROPERTY EX-
14 PENDITURES.—For purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified water
16 efficiency property expenditures’ means expenditures
17 for qualified water efficiency property which is—

18 “(A) installed on or in connection with a
19 dwelling unit located in the United States that
20 is owned by the taxpayer (without regard to
21 whether any other person occupies such dwell-
22 ing unit as a residence), and

23 “(B) originally placed in service by the tax-
24 payer.

1 Such term includes expenditures for labor costs
2 properly allocable to the onsite preparation, assem-
3 bly, or original installation of such property.

4 “(2) QUALIFIED WATER EFFICIENCY PROP-
5 erty.—The term ‘qualified water efficiency prop-
6 erty’ means—

7 “(A) property which meets the national ef-
8 ficiency standards and specifications for resi-
9 dential water-using fixtures, appliances, and de-
10 vices under the WaterSense program of the En-
11 vironmental Protection Agency that are in ef-
12 fect on the date of purchase of such property,
13 but only if such property improves water effi-
14 ciency by no less than 20 percent over standard
15 models of similar water-using fixtures and ap-
16 pliances as determined by the Administrator of
17 such Agency, and

18 “(B) water efficient landscaping which is
19 installed by a landscape irrigation professional
20 certified by such WaterSense program and
21 which reduces water use by no less than 50 per-
22 cent, as certified by such professional.

23 “(3) STATE WATER EFFICIENCY STANDARDS.—
24 In the case of a State that has mandatory water ef-
25 ficiency standards for any property that are more

1 stringent than the standards and specifications de-
2 scribed in paragraph (2), property installed on or in
3 connection with a dwelling unit that is located in
4 such State must meet such water efficiency stand-
5 ards of such State in order to be treated as qualified
6 water efficiency property for purposes of this sec-
7 tion.

8 “(d) SPECIAL RULES.—For purposes of this sec-
9 tion—

10 “(1) JOINT OWNERSHIP OF WATER EFFICIENCY
11 ITEMS.—

12 “(A) IN GENERAL.—An expenditure shall
13 not fail to be treated as a qualified water effi-
14 ciency property expenditure merely because
15 such expenditure was made with respect to 2 or
16 more dwelling units.

17 “(B) ALLOCATION OF EXPENDITURES.—In
18 the case of an expenditure made with respect to
19 2 or more dwelling units, for purposes of deter-
20 mining the credit allowable under this section,
21 such expenditure shall be allocated among such
22 dwelling units in proportion to the amount of
23 the expenditure made for each dwelling unit.

24 “(2) REFUNDS DISREGARDED IN THE ADMINIS-
25 TRATION OF FEDERAL PROGRAMS AND FEDERALLY

1 ASSISTED PROGRAMS.—Any credit or refund allowed
2 or made to any individual by reason of this section
3 shall not be taken into account as income and shall
4 not be taken into account as resources, for purposes
5 of determining the eligibility of such individual or
6 any other individual for benefits or assistance, or the
7 amount or extent of benefits or assistance, under
8 any Federal program or under any State or local
9 program financed in whole or in part with Federal
10 funds.

11 “(3) BASIS ADJUSTMENTS.—For purposes of
12 this subtitle, if a credit is allowed under subsection
13 (a) for any expenditure with respect to any property,
14 the increase in the basis of such property which
15 would (but for this subsection) result from such ex-
16 penditure shall be reduced by the amount of the
17 credit so allowed.

18 “(4) DENIAL OF DOUBLE BENEFIT.—

19 “(A) IN GENERAL.—No deduction or credit
20 under any other provision of this chapter shall
21 be allowed with respect to the amount of any
22 qualified water efficiency property expenditure
23 taken into account under this section.

24 “(B) REBATE PROGRAMS.—The amount of
25 any qualified water efficiency property expendi-

1 ture for which an individual is reimbursed
2 under any Federal government program shall
3 not be taken into account for purposes of deter-
4 mining the credit under subsection (a) with re-
5 spect such individual.

6 “(e) APPLICATION WITH OTHER CREDITS.—

7 “(1) BUSINESS CREDIT.—

8 “(A) BUSINESS CREDIT TREATED AS PART
9 OF GENERAL BUSINESS CREDIT.—So much of
10 the credit which would be allowed under sub-
11 section (a) for any taxable year (determined
12 without regard to this subsection) that is attrib-
13 utable to property of a character subject to an
14 allowance for depreciation shall be treated as a
15 credit listed in section 38(b) for such taxable
16 year (and not allowed under subsection (a)).

17 “(B) DISALLOWANCE OF DEPRECIATION.—

18 In the case of an expenditure for property de-
19 scribed in subparagraph (A) with respect to
20 which a credit is allowed under section 38(b) by
21 reason of such subparagraph, the depreciation
22 allowance for such property in all taxable years
23 shall be zero and no deduction shall be available
24 under section 167 with respect to such prop-
25 erty.

1 “(2) PERSONAL CREDIT.—

2 “(A) IN GENERAL.—For purposes of this
3 title, the credit allowed under subsection (a) for
4 any taxable year (determined after application
5 of paragraph (1)) shall be treated as a credit
6 allowable under subpart A for such taxable
7 year.

8 “(B) LIMITATION BASED ON AMOUNT OF
9 TAX.—In the case of a taxable year to which
10 section 26(a)(2) does not apply, the credit al-
11 lowed under subsection (a) for any taxable year
12 (determined after application of paragraph (1))
13 shall not exceed the excess of—

14 “(i) the sum of the regular tax liabil-
15 ity (as defined in section 26(b)), plus

16 “(ii) the sum of the credits allowable
17 under subpart A (other than this section
18 and sections 23, 25D, 30, 30B, and 30D)
19 and section 27 for the taxable year.

20 “(f) TERMINATION.—This section shall not apply
21 with respect to any property placed in service after Decem-
22 ber 31, 2014.”.

23 (b) CONFORMING AMENDMENTS.—

1 (1) Section 24(b)(3)(B) of the Internal Revenue
2 Code of 1986 is amended by striking “and 30D”
3 and inserting “, 30D, and 30E”.

4 (2) Section 25(e)(1)(C)(ii) of such Code is
5 amended by inserting “30E,” after “30D,”.

6 (3) Section 25B(g)(2) of such Code is amended
7 by striking “and 30D” and inserting “30D, and
8 30E”.

9 (4) Section 904(i) of such Code is amended by
10 striking “and 30D” and inserting “30D, and 30E”.

11 (5) Section 1016(a) of such Code is amended
12 by striking “and” at the end of paragraph (36), by
13 striking the period at the end of paragraph (37) and
14 inserting “, and”, and by adding at the end the fol-
15 lowing new paragraph:

16 “(38) to the extent provided in section
17 30E(d)(3).”.

18 (6) Section 1400C(d)(2) of such Code is
19 amended by striking “and 30D” and inserting
20 “30D, and 30E”.

21 (c) CREDIT TO BE PART OF BUSINESS CREDIT.—
22 Section 38(b) of the Internal Revenue Code of 1986 is
23 amended by striking “plus” at the end of paragraph (34),
24 by striking the period at the end of paragraph (35) and

1 inserting “, plus”, and by adding at the end the following
2 new paragraph:

3 “(36) the portion of the residential water effi-
4 ciency credit to which section 30E(e)(1) applies.”.

5 (d) CLERICAL AMENDMENT.—The table of sections
6 for subpart B of part IV of subchapter A of chapter 1
7 of the Internal Revenue Code of 1986 is amended by in-
8 serting after the item relating to section 30D the following
9 new item:

“Sec. 30E. Residential water efficiency credit.”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to property placed in service after
12 December 31, 2009.

13 **SEC. 3. NEW WATER EFFICIENT HOME CREDIT.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-
15 chapter A of chapter 1 of the Internal Revenue Code of
16 1986 is amended by adding at the end the following new
17 section:

18 **“SEC. 45R. NEW WATER EFFICIENT HOME CREDIT.**

19 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-
20 tion 38, in the case of an eligible contractor, the new water
21 efficient home credit for the taxable year is an amount
22 equal to \$1,500 for each qualified new water efficient
23 home which is—

24 “(1) constructed by such eligible contractor,
25 and

1 “(2) acquired by a person from such eligible
2 contractor during the taxable year.

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

4 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
5 ble contractor’ means a person who is certified as a
6 builder partner under the WaterSense program of
7 the Environmental Protection Agency and who is—

8 “(A) the person who constructed the quali-
9 fied new water efficient home, or

10 “(B) in the case of a qualified new energy
11 efficient home which is a manufactured home,
12 the manufactured home producer of such home.

13 “(2) QUALIFIED NEW WATER EFFICIENT
14 HOME.—The term ‘qualified new water efficient
15 home’ means a dwelling unit—

16 “(A) located in the United States,

17 “(B) the construction of which is substan-
18 tially completed after the date of the enactment
19 of this section, and

20 “(C) which is certified by the Environ-
21 mental Protection Agency as complying with
22 the Final Water-Efficient Single-Family New
23 Home Specification issued by such Agency.

1 “(3) CONSTRUCTION.—The term ‘construction’
2 includes substantial reconstruction and rehabilita-
3 tion.

4 “(4) ACQUIRE.—The term ‘acquire’ includes
5 purchase.

6 “(c) CERTIFICATION.—

7 “(1) METHOD OF CERTIFICATION.—A certifi-
8 cation described in subsection (b)(2)(C) shall be
9 made in accordance with guidance prescribed by the
10 Secretary, after consultation with the Administrator
11 of the Environmental Protection Agency. Such guid-
12 ance shall specify procedures and methods for calcu-
13 lating water and cost savings.

14 “(2) FORM.—Any certification described in sub-
15 section (b)(2)(C) shall be made in writing in a man-
16 ner which specifies in readily verifiable fashion the
17 water efficient components (including toilets, fau-
18 cets, other plumbing fixtures and appliances, hot
19 water delivery, landscape design, and irrigation sys-
20 tems) installed and their respective rated water effi-
21 ciency performance.

22 “(d) BASIS ADJUSTMENT.—For purposes of this sub-
23 title, if a credit is allowed under this section in connection
24 with any expenditure for any property, the increase in the
25 basis of such property which would (but for this sub-

1 section) result from such expenditure shall be reduced by
2 the amount of the credit so determined.

3 “(e) COORDINATION WITH OTHER CREDITS.—Ex-
4 penditures taken into account under section 45L, 47, or
5 48(a) shall not be taken into account under this section.

6 “(f) REBATE PROGRAMS.—The amount of the credit
7 allowed under subsection (a) to an eligible contractor with
8 respect to any qualified new water efficient home shall be
9 reduced, but not below zero, by the amount of any reim-
10 bursement which such contractor receives under any Fed-
11 eral government program for the construction of such
12 home or for expenditures relating to such construction.

13 “(g) TERMINATION.—This section shall not apply to
14 any qualified new water efficient home acquired after De-
15 cember 31, 2014.”.

16 (b) CREDIT TO BE PART OF GENERAL BUSINESS
17 CREDIT.—Section 38(b) of the Internal Revenue Code of
18 1986, as amended by this Act, is amended by striking
19 “plus” at the end of paragraph (35), by striking the period
20 at the end of paragraph (36) and inserting “, plus”, and
21 by adding at the end the following new paragraph:

22 “(37) the new water efficient home credit deter-
23 mined under section 45R.”.

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

1 of the Internal Revenue Code of 1986 is amended by add-
 2 ing at the end the following new item:

“Sec. 45R. New water efficient home credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to homes acquired after December
 5 31, 2009.

6 **SEC. 4. WATER CONSERVATION BONDS.**

7 (a) **IN GENERAL.**—Section 54D of the Internal Rev-
 8 enue Code of 1986 is amended—

9 (1) by striking “energy conservation bond” each
 10 place it appears in subsections (a), (b), and (d), and
 11 inserting “energy and water conservation bond”,

12 (2) by inserting “**AND WATER**” after “**QUALI-**
 13 **FIED ENERGY**” in the heading,

14 (3) by striking “State or local government” in
 15 subsection (a)(2) and inserting “State, local govern-
 16 ment, or water district”,

17 (4) by striking “\$3,200,000,000” in subsection
 18 (d) and inserting “\$4,000,000,000, of which not less
 19 than 20 percent shall be used for qualified conserva-
 20 tion purposes described in subsection (f)(1)(F)”, and

21 (5) by adding at the end of subsection (f)(1)
 22 the following new subparagraph:

23 “(F) Expenditures incurred for purposes
 24 of—

1 “(i) reducing water consumption by a
2 public building or facility by not less than
3 30 percent,

4 “(ii) advanced water metering infra-
5 structure, including the purchase, installa-
6 tion, and commissioning of advanced water
7 meters and related software and infra-
8 structure,

9 “(iii) investigation, design, or con-
10 struction of a qualified groundwater reme-
11 diation, desalination, or recycled water fa-
12 cility or system,

13 “(iv) increasing energy efficiency or
14 the generation and use of renewable energy
15 in the management, conveyance, or treat-
16 ment of water, wastewater, or stormwater,

17 “(v) reducing water loss in a water
18 distribution system, including training
19 water system personnel, annual testing and
20 calibration of meters, detecting and repair-
21 ing leaks, and purchase and installation of
22 related equipment, or

23 “(vi) establishing or improving a sys-
24 tem for volumetric billing to enable utilities
25 to base retail residential customer bills in

1 whole or in part on the volume of metered
2 water deliveries.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

6 **SEC. 5. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
7 **MENTS FOR ELECTRICITY.**

8 (a) IN GENERAL.—Subsection (b) of section 148 of
9 the Internal Revenue Code of 1986 is amended by adding
10 at the end the following new paragraph:

11 “(5) SAFE HARBOR FOR PREPAID ELECTRICITY
12 SUPPLY CONTRACTS.—

13 “(A) IN GENERAL.—The term ‘investment-
14 type property’ does not include a prepayment
15 under a qualified electricity supply contract.

16 “(B) QUALIFIED ELECTRICITY SUPPLY
17 CONTRACT.—

18 “(i) IN GENERAL.—For purposes of
19 this paragraph, the term ‘qualified elec-
20 tricity supply contract’ means—

21 “(I) any contract entered into by
22 a water or sewer utility to acquire
23 electricity for the use of such utility in
24 providing water or sewer services to
25 its customers, if such contract pro-

1 provides that the provider of such elec-
2 tricity under the contract will use not
3 less than 75 percent of the prepay-
4 ment described in subparagraph (A)
5 to acquire, construct, or improve a
6 qualified renewable energy facility,
7 and

8 “(II) any contract to acquire
9 electricity which is not described in
10 subclause (I) which the Secretary de-
11 termines does not constitute property
12 of the type intended to be described in
13 paragraph (2)(D).

14 “(ii) WATER OR SEWER UTILITY.—
15 The term ‘water or sewer utility’ means a
16 utility which is a governmental unit or is
17 owned by a governmental unit and which
18 provides—

19 “(I) water for residential, com-
20 mercial, irrigation, or industrial use,
21 or

22 “(II) sewer services for residen-
23 tial, commercial, or industrial use,
24 to retail or wholesale customers in the
25 service territory of such utility.

1 “(iii) QUALIFIED RENEWABLE EN-
2 ERGY FACILITY.—The term ‘qualified re-
3 newable energy facility’ means a qualified
4 facility within the meaning of section 45(d)
5 (without regard to paragraphs (8) and
6 (10) thereof, to the placed in service date
7 of such facility, and to the person who
8 owns such facility) which is located in the
9 United States.

10 “(iv) USE OF WATER OR SEWER UTIL-
11 ITY.—For purposes of clause (i)(I), a con-
12 tract shall be treated as providing elec-
13 tricity for the use of a water or sewer util-
14 ity if the sum of—

15 “(I) the total number of kilowatt
16 hours of electricity purchased under
17 such contract and any other contracts
18 for the purchase of electricity by such
19 utility in effect on the date of the exe-
20 cution of such contract, plus

21 “(II) the amount of electricity ex-
22 pected to be generated by any gener-
23 ating facilities owned and used by
24 such utility,

1 does not exceed by more than 10 percent
2 the total kilowatt hours of electricity ex-
3 pected to be used by such utility during
4 the term of such contract for the purpose
5 of providing water or sewer services to its
6 customers or for resale to other water or
7 sewer utilities for their use (and not for re-
8 sale to any entity that is not a water or
9 sewer utility).

10 “(C) OTHER RULES.—Rules similar to the
11 rules of subparagraphs (D)(ii), (G), and (I) of
12 paragraph (4) shall apply for purposes of this
13 paragraph.”.

14 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
15 TO PREPAYMENTS FOR ELECTRICITY.—Paragraph (2) of
16 section 141(c) of the Internal Revenue Code of 1986 is
17 amended—

18 (1) by striking “or” at the end of subparagraph

19 (B),

20 (2) by striking the period at the end of sub-
21 paragraph (C) and inserting “, or”, and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(D) is a qualified electricity supply con-
25 tract (as defined in section 148(b)(5)).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after the date
3 of the enactment of this Act.

○