

CREDIT FOR ENERGY-CONSERVING EXPENDITURES

FEDERAL NONBUSINESS ENERGY PROPERTY CREDIT

In an [overview of the credit for energy-conserving expenditures](#), staff asked the committee to consider whether [15-32-109](#), MCA, provides sufficient guidance on which expenditures are eligible for the tax credit. During that discussion, the committee requested additional information about federal tax credits for energy conservation property.

The federal nonbusiness energy property credit is narrower than the Montana credit for energy-conserving expenditures.

SECTION 25C NONBUSINESS ENERGY PROPERTY CREDIT

The federal tax credit for nonbusiness energy property is provided for in [26 U.S.C. 25C](#). Two types of expenditures qualify for the credit: qualified energy efficiency improvements and residential energy property expenditures.

QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS

Qualified energy efficiency improvements include the following components:

- insulation material or an insulation system designed to reduce heat loss or gain;
- exterior windows and skylights;
- exterior doors; and
- a metal or asphalt roof if the roof has pigmented coatings or cooling granules designed to reduce heat gain.

The components must also meet the following energy efficiency requirements:

- Roof products must meet applicable Energy Star program requirements.
- Exterior windows, skylights, and exterior doors must meet version 6.0 Energy Star program requirements.
- Any other components must meet the prescriptive criteria for the component established by the 2009 International Energy Conservation Code.

RESIDENTIAL ENERGY PROPERTY EXPENDITURES

Residential energy property expenditures include the following:

- energy efficient building property, which includes:
 - an electric heat pump water heater that yields a Uniform Energy Factor of at least 2.2 in the standard Department of Energy test procedures;
 - an electric heat pump or central air conditioner that achieves the highest efficiency tier established by the Consortium for Energy Efficiency in effect on January 1, 2009;
 - a natural gas, propane, or oil water heater with a Uniform Energy Factor of at least 0.82 or a thermal efficiency of at least 90%; and
 - a stove with a thermal efficiency rating of at least 75% that is used to heat a residence or to heat water in a residence by burning biomass fuel.
- a natural gas, propane, or oil furnace or hot water boiler that achieves an annual fuel utilization efficiency rate of at least 95; and
- an advanced main air circulating fan used in a natural gas, propane, or oil furnace and that has an annual electricity use of no more than 2% of the total annual energy use of the furnace.

The above property is subject to performance and quality standards adopted by the Secretary of the Treasury.

MONTANA CREDIT IS BROADER THAN FEDERAL CREDIT

The federal credit for nonbusiness energy property is more limited than the Montana credit for energy-conserving expenditures. Eligible investments for the Montana credit that are not eligible for the federal credit include exhaust fans, programmable thermostats, devices that limit the flow of hot water from shower heads and lavatories, glass fireplace doors, light fixtures, and lighting controls with cutoff switches.¹

The Montana credit is available for a broader array of investments because the Montana statute is less specific than federal law on the types of investments that qualify. Montana law requires an investment for an energy conservation purpose in the physical attributes of a building or for the installation of a water, heating, or cooling system.

SHOULD MONTANA ELIGIBILITY BE THE SAME AS FEDERAL ELIGIBILITY?

The Department of Revenue indicated that eligibility for the credit for energy-conserving expenditures is a source of confusion for taxpayers. The limited statutory language on eligible expenditures likely contributes to this confusion and requires the Department to continually review eligibility when credits are claimed.

¹ See "[Credit for Energy-Conserving Expenditures](#)," p. 2-3, for a summary of eligible investments.

Credit for Energy-Conserving Expenditures:
Federal Nonbusiness Energy Property Credit

If the committee wishes to recommend inclusion in statute of additional details about eligible expenditures, federal law could be a source of those details. However, expenditures currently eligible for the Montana credit would not be eligible if federal language is included in Montana law.

Another consideration related to using federal eligibility requirements is how to incorporate the federal requirements. For some tax credits available under state and federal law (such as the Earned Income Tax Credit and the credit for preservation of historic buildings), the state credit is calculated as a percentage of the federal credit. That approach may not be desirable for this credit because the federal credit is scheduled to expire at the end of tax year 2020. (Congress has renewed the credit several times in the past.)

Another common approach in income tax law is to incorporate definitions contained in federal law by referencing them in state law. Because of the uncertainty around the federal tax credit, this approach may not be a good choice. If the federal statute is amended or repealed, Montana law would have to be changed and this could prove difficult in a state with biennial legislative sessions.

If there is interest in revising Montana's law to reflect federal law, the safest approach is to reproduce the language included in federal law in Montana's statute. This protects the state from automatically incorporating changes made to the federal credit.