

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4424

To increase the energy credit for equipment used to generate electricity by geothermal power, to extend the grants for specified energy property, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 12, 2010

Mr. SESTAK introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To increase the energy credit for equipment used to generate electricity by geothermal power, to extend the grants for specified energy property, 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 “Enhancing Renewable  
5 Energy Investment Act”.

1 **SEC. 2. INCREASE OF ENERGY CREDIT FOR EQUIPMENT**  
2 **USED TO GENERATE ELECTRICITY BY GEO-**  
3 **THERMAL POWER.**

4 (a) IN GENERAL.—Clause (i) of section 48(a)(2)(A)  
5 of the Internal Revenue Code of 1986 is amended—

6 (1) in subclause (III), by striking “and”; and

7 (2) by adding at the end the following:

8 “(V) energy property described in  
9 paragraph (3)(A)(iii), but only with  
10 respect to periods ending before Janu-  
11 ary 1, 2017, and”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to property placed in service after  
14 the date of the enactment of this Act.

15 **SEC. 3. EXTENSION OF SPECIFIED ENERGY PROPERTY**  
16 **GRANTS IN LIEU OF CREDIT.**

17 (a) IN GENERAL.—Subsection (a) of section 1603 of  
18 the American Recovery and Reinvestment Tax Act of 2009  
19 is amended by striking “unless such property—” and all  
20 that follows through the period at the end and inserting  
21 the following: “unless such property is placed in service  
22 before the credit termination date with respect to such  
23 property.”.

24 (b) EFFECTIVE DATE.—The amendment made by  
25 this section shall apply to grants made after the date of  
26 the enactment of this Act.

1 **SEC. 4. NONQUALIFIED DEFERRED COMPENSATION FROM**  
2 **CERTAIN TAX INDIFFERENT PARTIES.**

3 (a) IN GENERAL.—Subpart B of part II of sub-  
4 chapter E of chapter 1 of the Internal Revenue Code of  
5 1986 is amended by inserting after section 457 the fol-  
6 lowing new section:

7 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
8 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

9 “(a) IN GENERAL.—Any compensation which is de-  
10 ferred under a nonqualified deferred compensation plan of  
11 a nonqualified entity shall be includible in gross income  
12 when there is no substantial risk of forfeiture of the rights  
13 to such compensation.

14 “(b) NONQUALIFIED ENTITY.—For purposes of this  
15 section, the term ‘nonqualified entity’ means—

16 “(1) any foreign corporation unless substan-  
17 tially all of its income is—

18 “(A) effectively connected with the conduct  
19 of a trade or business in the United States, or

20 “(B) subject to a comprehensive foreign in-  
21 come tax, and

22 “(2) any partnership unless substantially all of  
23 its income is allocated to persons other than—

24 “(A) foreign persons with respect to whom  
25 such income is not subject to a comprehensive  
26 foreign income tax, and

1           “(B) organizations which are exempt from  
2           tax under this title.

3           “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-  
4           TION.—

5           “(1) IN GENERAL.—If the amount of any com-  
6           pensation is not determinable at the time that such  
7           compensation is otherwise includible in gross income  
8           under subsection (a)—

9                   “(A) such amount shall be so includible in  
10                  gross income when determinable, and

11                   “(B) the tax imposed under this chapter  
12                  for the taxable year in which such compensation  
13                  is includible in gross income shall be increased  
14                  by the sum of—

15                           “(i) the amount of interest determined  
16                          under paragraph (2), and

17                           “(ii) an amount equal to 20 percent of  
18                          the amount of such compensation.

19           “(2) INTEREST.—For purposes of paragraph  
20           (1)(B)(i), the interest determined under this para-  
21           graph for any taxable year is the amount of interest  
22           at the underpayment rate under section 6621 plus  
23           1 percentage point on the underpayments that would  
24           have occurred had the deferred compensation been  
25           includible in gross income for the taxable year in

1 which first deferred or, if later, the first taxable year  
2 in which such deferred compensation is not subject  
3 to a substantial risk of forfeiture.

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

6 “(1) SUBSTANTIAL RISK OF FORFEITURE.—

7 “(A) IN GENERAL.—The rights of a person  
8 to compensation shall be treated as subject to  
9 a substantial risk of forfeiture only if such per-  
10 son’s rights to such compensation are condi-  
11 tioned upon the future performance of substan-  
12 tial services by any individual.

13 “(B) EXCEPTION FOR COMPENSATION  
14 BASED ON GAIN RECOGNIZED ON AN INVEST-  
15 MENT ASSET.—

16 “(i) IN GENERAL.—To the extent pro-  
17 vided in regulations prescribed by the Sec-  
18 retary, if compensation is determined solely  
19 by reference to the amount of gain recog-  
20 nized on the disposition of an investment  
21 asset, such compensation shall be treated  
22 as subject to a substantial risk of for-  
23 feiture until the date of such disposition.

24 “(ii) INVESTMENT ASSET.—For pur-  
25 poses of clause (i), the term ‘investment

1           asset’ means any single asset (other than  
2           an investment fund or similar entity)—

3                   “(I) acquired directly by an in-  
4                   vestment fund or similar entity,

5                   “(II) with respect to which such  
6                   entity does not (nor does any person  
7                   related to such entity) participate in  
8                   the active management of such asset  
9                   (or if such asset is an interest in an  
10                  entity, in the active management of  
11                  the activities of such entity), and

12                  “(III) substantially all of any  
13                  gain on the disposition of which (other  
14                  than such deferred compensation) is  
15                  allocated to investors in such entity.

16                  “(iii) COORDINATION WITH SPECIAL  
17                  RULE.—Paragraph (3)(B) shall not apply  
18                  to any compensation to which clause (i)  
19                  applies.

20                  “(2) COMPREHENSIVE FOREIGN INCOME TAX.—

21                  The term ‘comprehensive foreign income tax’ means,  
22                  with respect to any foreign person, the income tax  
23                  of a foreign country if—

1           “(A) such person is eligible for the benefits  
2 of a comprehensive income tax treaty between  
3 such foreign country and the United States, or

4           “(B) such person demonstrates to the sat-  
5 isfaction of the Secretary that such foreign  
6 country has a comprehensive income tax.

7           “(3) NONQUALIFIED DEFERRED COMPENSA-  
8 TION PLAN.—

9           “(A) IN GENERAL.—The term ‘non-  
10 qualified deferred compensation plan’ has the  
11 meaning given such term under section  
12 409A(d), except that such term shall include  
13 any plan that provides a right to compensation  
14 based on the appreciation in value of a specified  
15 number of equity units of the service recipient.

16           “(B) EXCEPTION.—Compensation shall  
17 not be treated as deferred for purposes of this  
18 section if the service provider receives payment  
19 of such compensation not later than 12 months  
20 after the end of the taxable year of the service  
21 recipient during which the right to the payment  
22 of such compensation is no longer subject to a  
23 substantial risk of forfeiture.

24           “(4) EXCEPTION FOR CERTAIN COMPENSATION  
25 WITH RESPECT TO EFFECTIVELY CONNECTED IN-

1       COME.—In the case of a foreign corporation with in-  
2       come which is taxable under section 882, this section  
3       shall not apply to compensation which, had such  
4       compensation had been paid in cash on the date that  
5       such compensation ceased to be subject to a sub-  
6       stantial risk of forfeiture, would have been deduct-  
7       ible by such foreign corporation against such income.

8               “(5) APPLICATION OF RULES.—Rules similar to  
9       the rules of paragraphs (5) and (6) of section  
10       409A(d) shall apply.

11       “(e) REGULATIONS.—The Secretary shall prescribe  
12       such regulations as may be necessary or appropriate to  
13       carry out the purposes of this section, including regula-  
14       tions disregarding a substantial risk of forfeiture in cases  
15       where necessary to carry out the purposes of this sec-  
16       tion.”.

17       (b) CONFORMING AMENDMENT.—Section 26(b)(2) of  
18       such Code is amended by striking “and” at the end of  
19       subparagraph (V), by striking the period at the end of  
20       subparagraph (W) and inserting “, and”, and by adding  
21       at the end the following new subparagraph:

22               “(X) section 457A(c)(1)(B) (relating to de-  
23       terminability of amounts of compensation).”.

24       (c) CLERICAL AMENDMENT.—The table of sections  
25       of subpart B of part II of subchapter E of chapter 1 of



1 such Code is amended by inserting after the item relating  
2 to section 457 the following new item:

“Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
parties.”.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as otherwise pro-  
5 vided in this subsection, the amendments made by  
6 this section shall apply to amounts deferred which  
7 are attributable to services performed after Decem-  
8 ber 31, 2008.

9 (2) APPLICATION TO EXISTING DEFERRALS.—

10 In the case of any amount deferred to which the  
11 amendments made by this section do not apply solely  
12 by reason of the fact that the amount is attributable  
13 to services performed before January 1, 2009, to the  
14 extent such amount is not includible in gross income  
15 in a taxable year beginning before 2018, such  
16 amounts shall be includible in gross income in the  
17 later of—

18 (A) the last taxable year beginning before  
19 2018, or

20 (B) the taxable year in which there is no  
21 substantial risk of forfeiture of the rights to  
22 such compensation (determined in the same  
23 manner as determined for purposes of section

1           457A of the Internal Revenue Code of 1986, as  
2           added by this section).

3           (3) ACCELERATED PAYMENTS.—No later than  
4           120 days after the date of the enactment of this Act,  
5           the Secretary shall issue guidance providing a lim-  
6           ited period of time during which a nonqualified de-  
7           ferred compensation arrangement attributable to  
8           services performed on or before December 31, 2008,  
9           may, without violating the requirements of section  
10          409A(a) of the Internal Revenue Code of 1986, be  
11          amended to conform the date of distribution to the  
12          date the amounts are required to be included in in-  
13          come.

14          (4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—  
15          If the taxpayer is also a service recipient and main-  
16          tains one or more nonqualified deferred compensa-  
17          tion arrangements for its service providers under  
18          which any amount is attributable to services per-  
19          formed on or before December 31, 2008, the guid-  
20          ance issued under paragraph (4) shall permit such  
21          arrangements to be amended to conform the dates of  
22          distribution under such arrangement to the date  
23          amounts are required to be included in the income  
24          of such taxpayer under this subsection.

1           (5) ACCELERATED PAYMENT NOT TREATED AS  
2 MATERIAL MODIFICATION.—Any amendment to a  
3 nonqualified deferred compensation arrangement  
4 made pursuant to paragraph (4) or (5) shall not be  
5 treated as a material modification of the arrange-  
6 ment for purposes of section 409A of the Internal  
7 Revenue Code of 1986.

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