

111TH CONGRESS  
2D SESSION

# H. R. 4599

To amend the Internal Revenue Code of 1986 to provide an elective payment for specified energy property.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2010

Mr. BLUMENAUER (for himself, Mr. McDERMOTT, Mr. VAN HOLLEN, Ms. LINDA T. SÁNCHEZ of California, Mr. WALZ, Mr. LARSON of Connecticut, Mr. THOMPSON of California, Mr. DOGGETT, Mr. PASCRELL, and Mr. POMEROY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide an elective payment for specified energy property.

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 “Renewable Energy Ex-  
5 pansion Act of 2010”.

6 **SEC. 2. ELECTIVE PAYMENT FOR SPECIFIED ENERGY**  
7 **PROPERTY.**

8 (a) IN GENERAL.—Chapter 65 of the Internal Rev-  
9 enue Code of 1986 (relating to abatements, credits, and

1 refunds) is amended by adding at the end the following  
2 new subchapter:

3 **“Subchapter C—Direct Payment Provisions**

“Sec. 6451. Elective payment for specified energy property.

4 **“SEC. 6451. ELECTIVE PAYMENT FOR SPECIFIED ENERGY**  
5 **PROPERTY.**

6 “(a) IN GENERAL.—Any person making an election  
7 under this section with respect to any specified energy  
8 property originally placed in service by such person during  
9 the taxable year shall be treated as making a payment,  
10 against the tax imposed by subtitle A for the taxable year,  
11 equal to the applicable percentage of the basis of such  
12 property. Such payment shall be treated as made on the  
13 later of the due date of the return of such tax or the date  
14 on which such return is filed.

15 “(b) APPLICABLE PERCENTAGE.—For purposes of  
16 this section, the term ‘applicable percentage’ means—

17 “(1) 30 percent in the case of any property de-  
18 scribed in paragraph (2)(A)(i) or (5) of section  
19 48(a), and

20 “(2) 10 percent in the case of any other prop-  
21 erty.

22 “(c) DOLLAR LIMITATIONS.—In the case of property  
23 described in paragraph (1), (2), or (3) of section 48(c),  
24 the payment otherwise treated as made under subsection

1 (a) with respect to such property shall not exceed the limi-  
2 tation applicable to such property under such paragraph.

3 “(d) SPECIFIED ENERGY PROPERTY.—For purposes  
4 of this section—

5 “(1) IN GENERAL.—The term ‘specified energy  
6 property’ means energy property (within the mean-  
7 ing of section 48) which—

8 “(A) is originally placed in service before  
9 January 1, 2013, or

10 “(B) is originally placed in service on or  
11 after such date and before the credit termi-  
12 nation date with respect to such property, but  
13 only if the construction of such property began  
14 before January 1, 2013.

15 “(2) CREDIT TERMINATION DATE.—The term  
16 ‘credit termination date’ means—

17 “(A) in the case of any energy property  
18 which is part of a facility described in para-  
19 graph (1) of section 45(d), January 1, 2013,

20 “(B) in the case of any energy property  
21 which is part of a facility described in para-  
22 graph (2), (3), (4), (6), (7), (9), or (11) of sec-  
23 tion 45(d), January 1, 2014, and

24 “(C) in the case of any energy property de-  
25 scribed in section 48(a)(3), January 1, 2017.

1 In the case of any property which is described in  
2 subparagraph (C) and also in another subparagraph  
3 of this paragraph, subparagraph (C) shall apply with  
4 respect to such property.

5 “(e) SPECIAL RULES FOR CERTAIN NON-TAX-  
6 PAYERS.—

7 “(1) DENIAL OF PAYMENT.—Subsection (a)  
8 shall not apply with respect to any property origi-  
9 nally placed in service by—

10 “(A) any governmental entity,

11 “(B) any organization described in section  
12 501(c) or 401(a) and exempt from tax under  
13 section 501(a), or

14 “(C) any entity referred to in paragraph  
15 (4) of section 54(j).

16 “(2) EXCEPTION FOR PROPERTY USED IN UN-  
17 RELATED TRADE OR BUSINESS.—Paragraph (1)  
18 shall not apply with respect to any property origi-  
19 nally placed in service by an entity described in sec-  
20 tion 511(a)(2) if substantially all of the income de-  
21 rived from such property by such entity is unrelated  
22 business taxable income (as defined in section 512).

23 “(3) SPECIAL RULES FOR PARTNERSHIPS AND  
24 S CORPORATIONS.—In the case of property originally

1 placed in service by a partnership or an S corpora-  
2 tion—

3 “(A) the election under subsection (a) may  
4 be made only by such partnership or S corpora-  
5 tion,

6 “(B) such partnership or S corporation  
7 shall be treated as making the payment referred  
8 to in subsection (a) only to the extent of the  
9 proportionate share of such partnership or S  
10 corporation as is owned by persons who would  
11 be treated as making such payment if the prop-  
12 erty were originally placed in service by such  
13 persons, and

14 “(C) the return required to be made by  
15 such partnership or S corporation under section  
16 6031 or 6037 (as the case may be) shall be  
17 treated as a return of tax for purposes of sub-  
18 section (a).

19 For purposes of subparagraph (B), rules similar to the  
20 rules of section 168(h)(6) (other than subparagraph (F)  
21 thereof) shall apply.

22 “(f) COORDINATION WITH PRODUCTION AND IN-  
23 VESTMENT CREDITS.—In the case of any property with  
24 respect to which an election is made under this section—

1           “(1) DENIAL OF PRODUCTION AND INVEST-  
2           MENT CREDITS.—No credit shall be determined  
3           under section 45 or 48 with respect to such property  
4           for the taxable year in which such property is origi-  
5           nally placed in service or any subsequent taxable  
6           year.

7           “(2) REDUCTION OF PAYMENT BY PROGRESS  
8           EXPENDITURES ALREADY TAKEN INTO ACCOUNT.—  
9           The amount of the payment treated as made under  
10          subsection (a) with respect to such property shall be  
11          reduced by the aggregate amount of credits deter-  
12          mined under section 48 with respect to such prop-  
13          erty for all taxable years preceding the taxable year  
14          in which such property is originally placed in service.

15          “(g) OTHER DEFINITIONS AND SPECIAL RULES.—  
16          For purposes of this section—

17                 “(1) OTHER DEFINITIONS.—Terms used in this  
18                 section which are also used in section 45 or 48 shall  
19                 have the same meaning for purposes of this section  
20                 as when used in such sections.

21                 “(2) APPLICATION OF RECAPTURE RULES,  
22                 ETC.—Except as otherwise provided by the Sec-  
23                 retary—

1           “(A) IN GENERAL.—Except as otherwise  
2           provided in this paragraph, rules similar to the  
3           rules of section 50 shall apply.

4           “(B) EXCEPTION TO LIMITATION ON REAL  
5           ESTATE INVESTMENT TRUSTS, ETC.—Para-  
6           graph (1) of section 50(d) shall not apply.

7           “(C) APPLICATION OF NORMALIZATION  
8           RULES.—Paragraph (2) of section 50(d) shall  
9           not apply with respect to property placed in  
10          service by a person in the trade or business of  
11          furnishing or selling electrical energy if any law  
12          or regulation requires that not less than a cer-  
13          tain amount of the electrical energy so fur-  
14          nished or sold by such person be derived from  
15          one or more renewable resources.

16          “(3) PROVISION OF INFORMATION.—A person  
17          shall not be treated as having elected the application  
18          of this section unless the taxpayer provides such in-  
19          formation as the Secretary (in consultation with the  
20          Secretary of Energy) may require for purposes of  
21          verifying the proper amount to be treated as a pay-  
22          ment under subsection (a) and evaluating the effec-  
23          tiveness of this section.

24          “(4) EXCLUSION FROM GROSS INCOME.—Any  
25          credit or refund allowed or made by reason of this

1 section shall not be includible in gross income or al-  
2 ternative minimum taxable income.

3 “(5) COORDINATION WITH GRANT PROGRAM.—

4 If a grant under section 1603 of the American Re-  
5 covery and Reinvestment Tax Act of 2009 is made  
6 with respect to any specified energy property—

7 “(A) no election may be made under sub-  
8 section (a) with respect to such property on or  
9 after the date of such grant, and

10 “(B) if such grant is made after such elec-  
11 tion, such property shall be treated as having  
12 ceased to be specified energy property imme-  
13 diately after such property was originally placed  
14 in service.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Subparagraph (A) of section 6211(b)(4)(A)  
17 of such Code is amended by inserting “and sub-  
18 chapter C of chapter 65 (including any payment  
19 treated as made under such subchapter)” after  
20 “6431”.

21 (2) Subparagraph (B) of section 6425(c)(1) of  
22 such Code is amended—

23 (A) by striking “the credits” and inserting  
24 “the sum of—

25 “(i) the credits”,

1 (B) by striking the period at the end of  
2 clause (i) thereof (as amended by this para-  
3 graph) and inserting “, plus”, and

4 (C) by adding at the end the following new  
5 clause:

6 “(ii) the payments treated as made  
7 under subchapter C of chapter 65.”.

8 (3) Paragraph (3) of section 6654(f) of such  
9 Code is amended—

10 (A) by striking “the credits” and inserting  
11 “the sum of—

12 “(A) the credits”,

13 (B) by striking the period at the end of  
14 subparagraph (A) thereof (as amended by this  
15 paragraph) and inserting “, and”, and

16 (C) by adding at the end the following new  
17 subparagraph:

18 “(B) the payments treated as made under  
19 subchapter C of chapter 65.”.

20 (4) Subparagraph (B) of section 6655(g)(1) of  
21 such Code is amended—

22 (A) by striking “the credits” and inserting  
23 “the sum of—

24 “(i) the credits”,

1 (B) by striking the period at the end of  
2 clause (i) thereof (as amended by this para-  
3 graph) and inserting “, plus”, and

4 (C) by adding at the end the following new  
5 clause:

6 “(ii) the payments treated as made  
7 under subchapter C of chapter 65.”.

8 (5) Paragraph (2) of section 1324(b) of title  
9 31, United States Code, is amended by inserting “,  
10 or from the provisions of subchapter C of chapter 65  
11 of such Code” before the period at the end.

12 (6) The table of subchapters for chapter 65 of  
13 the Internal Revenue Code of 1986 is amended by  
14 adding at the end the following new item:

“SUBCHAPTER C. DIRECT PAYMENT PROVISIONS.”

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to property originally placed in  
17 service after the date of the enactment of this Act.

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