

108TH CONGRESS
2D SESSION

H. R. 5319

To provide incentives for investment in renewable energy facilities.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2004

Ms. HERSETH introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To provide incentives for investment in renewable energy
facilities.

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 Fi-
5 nancing Incentive Act of 2004”.

6 **SEC. 2. NONRECOGNITION OF GAIN FROM SALE OF REAL**
7 **PROPERTY UPON SUBSEQUENT PURCHASE**
8 **OF RENEWABLE ENERGY PROPERTY.**

9 (a) IN GENERAL.—Part III of subchapter O of chap-
10 ter 1 of the Internal Revenue Code of 1986 (relating to

1 common nontaxable exchanges) is amended by adding at
 2 the end the following new section:

3 **“SEC. 1046. NONRECOGNITION OF GAIN FROM SALE OF**
 4 **REAL PROPERTY UPON SUBSEQUENT PUR-**
 5 **CHASE OF RENEWABLE ENERGY PROPERTY.**

6 “(a) GENERAL RULE.—If—

7 “(1) the taxpayer elects in such form as the
 8 Secretary may prescribe the application of this sec-
 9 tion with respect to any sale of real property located
 10 in the United States,

11 “(2) such sale gives rise to gain, and

12 “(3) the seller of such property acquires renew-
 13 able energy property within the replacement period,
 14 then, except as provided in subsections (b) and (e), no gain
 15 shall result to the taxpayer from the sale of such property.

16 “(b) AMOUNT OF GAIN RESULTING.—

17 “(1) IN GENERAL.—In the case of an acquisi-
 18 tion of renewable energy property to which sub-
 19 section (a) applies, gain shall result from such acqui-
 20 sition to the extent that the price for which such
 21 real property is sold exceeds the cost of the renew-
 22 able energy property acquired.

23 “(2) GAIN RECOGNIZED.—Except as provided
 24 in this section, the gain determined under paragraph

1 (1) shall be recognized, notwithstanding any other
2 provision of this subtitle.

3 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) RENEWABLE ENERGY PROPERTY.—The
6 term ‘renewable energy property’ means a facility lo-
7 cated in the United States which uses renewable en-
8 ergy sources as a primary feedstock for the genera-
9 tion of electricity or the manufacture of motor vehi-
10 cle fuels.

11 “(2) SPECIAL RULE RELATING TO STOCK AND
12 INTERESTS IN PARTNERSHIPS.—

13 “(A) PARTNERSHIP INTEREST.—An inter-
14 est in a partnership shall be treated as an inter-
15 est in each of the assets of the partnership and
16 not as an interest in the partnership.

17 “(B) STOCK IN CORPORATION.—Stock in a
18 corporation the principal business of which is
19 owning or operating renewable energy property
20 shall be treated as such property.

21 “(C) COOPERATIVES.—Rules similar to the
22 rules of subparagraph (A) or (B), as appro-
23 priate, shall apply in the case of an organiza-
24 tion which is subject to section 521 or to which
25 part I of subchapter T applies.

1 “(3) REPLACEMENT PERIOD.—The term ‘re-
2 placement period’ means the 2-year period beginning
3 on the date of the sale of real property with respect
4 to which there is in effect an election under sub-
5 section (a).

6 “(4) REQUIREMENT THAT PROPERTY BE IDEN-
7 TIFIED.—For purposes of this section, any property
8 received by the taxpayer shall be treated as property
9 which is not like-kind property if such property is
10 not identified as property to be received in the ex-
11 change on or before the day which is 180 days after
12 the date on which the taxpayer transfers the prop-
13 erty relinquished in the exchange.

14 “(d) BASIS OF RENEWABLE ENERGY PROPERTY.—
15 The basis shall be the same as that of the property ex-
16 changed, decreased in the amount of any money received
17 by the taxpayer and increased in the amount of gain or
18 decreased in the amount of loss to the taxpayer that was
19 recognized on such exchange.

20 “(e) RECAPTURE.—

21 “(1) IN GENERAL.—If a taxpayer disposes of
22 any renewable energy property, then, notwith-
23 standing any other provision of this title, gain (if
24 any) shall be recognized to the extent of the gain
25 which was not recognized under subsection (a) by

1 reason of the acquisition by such taxpayer of such
2 renewable energy property.

3 “(2) CERTAIN DISPOSITIONS NOT TAKEN INTO
4 ACCOUNT.—For purposes of paragraph (1), there
5 shall not be taken into account any disposition—

6 “(A) after the death of the taxpayer,

7 “(B) in a compulsory or involuntary con-
8 version (within the meaning of section 1033) if
9 the exchange occurred before the threat or im-
10 minence of such conversion, or

11 “(C) with respect to which it is established
12 to the satisfaction of the Secretary that such
13 disposition had as one of its principal purposes
14 the avoidance of Federal income tax.

15 “(f) STATUTE OF LIMITATIONS.—If any gain is real-
16 ized by the taxpayer on the sale or exchange of any renew-
17 able energy property and there is in effect an election
18 under subsection (a) with respect to such gain, then—

19 “(1) the statutory period for the assessment of
20 any deficiency with respect to such gain shall not ex-
21 pire before the expiration of 3 years from the date
22 the Secretary is notified by the taxpayer (in such
23 manner as the Secretary may by regulations pre-
24 scribe) of—

1 “(A) the taxpayer’s cost of purchasing re-
2 newable energy property which the taxpayer
3 claims results in nonrecognition of any part of
4 such gain,

5 “(B) the taxpayer’s intention not to pur-
6 chase renewable energy property within the re-
7 placement period, or

8 “(C) a failure to make such purchase with-
9 in the replacement period, and

10 “(2) such deficiency may be assessed before the
11 expiration of such 3-year period notwithstanding the
12 provisions of any other law or rule of law which
13 would otherwise prevent such assessment.”.

14 (b) CONFORMING AMENDMENT.—Section 1016(a) of
15 such Code is amended by striking “and” at the end of
16 paragraph (27), by striking the period at the end of para-
17 graph (28) and inserting “, and”, and by adding at the
18 end the following new paragraph:

19 “(29) in the case of property the acquisition of
20 which resulted under section 1046 in the non-
21 recognition of any part of the gain realized on the
22 sale of other property, to the extent provided in sec-
23 tion 1046.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
2 for part III of subchapter O of chapter 1 of such Code
3 is amended by adding at the end the following new item:

“Sec. 1046. Nonrecognition of gain from sale of real property upon subsequent
purchase of renewable energy property.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to real property sold
6 after December 31, 2004.

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