

111TH CONGRESS  
1ST SESSION

# H. R. 4389

To amend the Internal Revenue Code of 1986 to allow a credit against income tax to taxpayers using energy derived from biomass to power domestic paper, pulp and paperboard manufacturing process facilities.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. MURPHY of New York 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 allow a credit against income tax to taxpayers using energy derived from biomass to power domestic paper, pulp and paperboard manufacturing process 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 “Green Energy Paper  
5 Manufacturing Act of 2009”.

1 **SEC. 2. CREDIT FOR USING ENERGY DERIVED FROM BIO-**  
 2 **MASS TO POWER DOMESTIC PAPER, PULP**  
 3 **AND PAPERBOARD MANUFACTURING PROC-**  
 4 **ESS FACILITIES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-  
 6 chapter A of chapter 1 of the Internal Revenue Code of  
 7 1986 (relating to business-related credits) is amended by  
 8 inserting after section 45Q the following new section:

9 **“SEC. 45R. ENERGY DERIVED FROM BIOMASS TO POWER**  
 10 **DOMESTIC PAPER, PULP AND PAPERBOARD**  
 11 **MANUFACTURING PROCESS FACILITIES.**

12 “(a) GENERAL RULE.—For purposes of section 38,  
 13 the renewable green-energy pulp, paper or paperboard  
 14 manufacturing credit for any taxable year is an amount  
 15 equal to the product of—

16 “(1) \$4, multiplied by

17 “(2) the number of million Btus of steam and  
 18 electricity—

19 “(A) produced by the taxpayer—

20 “(i) from biomass fuels, and

21 “(ii) at a qualified paper product fa-  
 22 cility (or at an energy production facility  
 23 which is located in the United States and  
 24 which is under contract to provide steam  
 25 or electricity to any qualified paper prod-  
 26 uct facility) during the 10-year period be-

1           ginning on the later of the date of the en-  
 2           actment of this section or the date the fa-  
 3           cility was originally placed in service, and  
 4           “(B) used by the taxpayer at, or provided  
 5           by the taxpayer to, any pulp, paper or paper-  
 6           board manufacturing facility located in the  
 7           United States.

8           “(b) MAXIMUM ANNUAL CREDIT PER FACILITY.—

9           “(1) IN GENERAL.—The credit determined  
 10          under this section for energy used during the taxable  
 11          year at any qualified paper product facility shall not  
 12          exceed \$25,000,000.

13          “(2) COORDINATION WITH ADVANCE PAY-  
 14          MENTS.—The dollar amount in paragraph (1) shall  
 15          be reduced for any taxable year by the aggregate of  
 16          the claims made under section 6429 for periods dur-  
 17          ing such year with respect to such facility.

18          “(c) DENIAL OF DOUBLE BENEFIT.—Btus may not  
 19          be taken into account under subsection (a)(2) if any credit  
 20          is allowed under section 40, 40A, 45, or 6426 for the elec-  
 21          tricity generation, the feedstock, or for the blending of the  
 22          feedstock associated with the Btus.

23          “(d) DEFINITIONS.—For purposes of this section—

24          “(1) BIOMASS FUELS.—

1           “(A) IN GENERAL.—The term ‘biomass  
2           fuels’ means any liquid, solid, or gaseous fuel  
3           derived from biomass (as defined in section  
4           45K(c)(3)) or from biomass process residuals  
5           from recycled and other paper facilities.

6           “(B) COFIRING WITH FOSSIL FUELS.—In  
7           the case of fossil fuel burned in conjunction  
8           with any biomass fuel, only the Btus attrib-  
9           utable to biomass fuel may be taken into ac-  
10          count under subsection (a).

11          “(2) QUALIFIED PAPER PRODUCT FACILITY.—  
12          The term ‘qualified paper product facility’ means  
13          any pulp, paper, or paperboard manufacturing facil-  
14          ity—

15                 “(A) which is originally placed in service  
16                 before the close of the 5-year period beginning  
17                 on the date of the enactment of this section,  
18                 and

19                 “(B) which is located in the United States.

20          “(e) REINVESTMENT REQUIREMENT.—

21                 “(1) IN GENERAL.—The tax imposed by this  
22                 chapter for any taxable year shall be increased by  
23                 the recapture amount (if any) for the 3rd preceding  
24                 taxable year.

1           “(2) RECAPTURE AMOUNT.—For purposes of  
2           paragraph (1), the term ‘recapture amount’ means,  
3           with respect to any taxable year, the excess (if any)  
4           of—

5                   “(A) 50 percent of the sum of—

6                           “(i) the credit determined under this  
7                           section for the taxable year, and

8                           “(ii) the aggregate payments made  
9                           under section 6429 to the taxpayer for  
10                          steam and electricity produced during such  
11                          year, over

12                          “(B) the aggregate qualified reinvestment  
13                          made by the taxpayer during such year and the  
14                          3 succeeding taxable years (reduced by the  
15                          qualified reinvestment taken into account in de-  
16                          termining the recapture amount for any prior  
17                          taxable year).

18           “(3) QUALIFIED REINVESTMENT.—

19                   “(A) IN GENERAL.—For purposes of para-  
20                   graph (2), the term ‘qualified reinvestment’  
21                   means the basis of renewable energy projects,  
22                   energy efficiency projects and other environ-  
23                   mental improvements at facilities owned by the  
24                   taxpayer and located in the United States.

1           “(B) REDUCTION FOR FEDERAL BENE-  
2           FITS.—The basis otherwise taken into account  
3           under subparagraph (A) shall be reduced by the  
4           aggregate of—

5                   “(i) the credits under this chapter,  
6                   and

7                   “(ii) Federal grants,  
8           allowed or received on account of the invest-  
9           ment.

10           “(4) WHEN REINVESTMENTS TAKEN INTO AC-  
11           COUNT.—

12                   “(A) IN GENERAL.—Qualified reinvestment  
13           shall be taken into account when the property  
14           is placed in service.

15                   “(B) ELECTION.—At the election of the  
16           taxpayer with respect to any qualified reinvest-  
17           ment which is constructed by the taxpayer—

18                   “(i) the estimated amount of such in-  
19           vestment shall be treated as made when  
20           the physical work of such construction be-  
21           gins, and

22                   “(ii) proper adjustments shall be  
23           made to such amount in the taxable year  
24           in which such investment is placed in serv-

1                   ice in any case where such estimate is  
2                   greater or less than the proper amount.

3           “(f) MULTIPLE FACILITY OWNERS.—If more than 1  
4 person has an ownership interest in a qualified paper  
5 product facility, the dollar limitation in subsection (b)  
6 shall be allocated among such persons under regulations  
7 prescribed by the Secretary.”.

8           (b) CREDIT MADE PART OF GENERAL BUSINESS  
9 CREDIT AND ALLOWABLE AGAINST MINIMUM TAX.—

10           (1) IN GENERAL.—Subsection (b) of section 38  
11 of such Code (relating to current year business cred-  
12 it) is amended by striking “plus” at the end of para-  
13 graph (34), by striking the period at the end of  
14 paragraph (35) and inserting “, plus”, and by add-  
15 ing at the end the following new paragraph:

16           “(36) the renewable green-energy pulp, paper  
17 or paperboard manufacturing credit determined  
18 under section 45R.”.

19           (2) CREDIT ALLOWABLE AGAINST MINIMUM  
20 TAX.—Subparagraph (B) of section 38(c)(4) of such  
21 Code (relating to specified credits) is amended by  
22 striking “and” at the end of clause (vii), by striking  
23 the period at the end of clause (viii) and inserting  
24 “, and”, and by adding at the end the following new  
25 clause:

1 “(ix) the credit determined under sec-  
 2 tion 45R.”.

3 (c) CLERICAL AMENDMENT.—The table of sections  
 4 for subpart D of part IV of subchapter A of chapter 1  
 5 of such Code is amended by inserting after the item relat-  
 6 ing to section 45Q the following new item:

“Sec. 45R. Energy derived from biomass to power domestic paper, pulp and pa-  
 perboard manufacturing process facilities.”.

7 (d) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to energy produced after December  
 9 31, 2009, in taxable years ending after such date.

10 **SEC. 3. ADVANCE PAYMENTS FOR LIQUID BIOMASS USED**  
 11 **AS A FUEL AT PAPER PRODUCT FACILITIES.**

12 (a) IN GENERAL.—Subchapter B of chapter 65 of the  
 13 Internal Revenue Code of 1986 (relating to abatements,  
 14 credits, and refunds) is amended by striking section 6429  
 15 and inserting the following new section:

16 **“SEC. 6429. ADVANCE PAYMENTS FOR LIQUID BIOMASS**  
 17 **USED AS A FUEL AT PAPER PRODUCT FACILI-**  
 18 **TIES.**

19 “(a) IN GENERAL.—If any person uses any qualified  
 20 biomass liquid as a fuel to produce steam or electricity  
 21 for use at any pulp, paper or paperboard manufacturing  
 22 facility located in the United States, the Secretary shall  
 23 pay (without interest) to such person an amount equal  
 24 to—



1 “(1) \$4, multiplied by

2 “(2) the number of million Btus of steam and  
3 electricity so produced.

4 “(b) MAXIMUM ANNUAL PAYMENTS PER FACIL-  
5 ITY.—The amount paid by the Secretary under this sec-  
6 tion for energy used during any taxable year at any quali-  
7 fied paper product facility shall not exceed \$25,000,000.

8 “(c) QUALIFIED BIOMASS LIQUID.—For purposes of  
9 this section, the term ‘qualified biomass liquid’ means any  
10 liquid—

11 “(1) which is derived from—

12 “(A) biomass (as defined in section  
13 45K(c)(3)), or

14 “(B) biomass process residuals from recy-  
15 cled and other paper facilities if such residuals  
16 meet the test of liquids set forth in ASTM  
17 D4359–90, and

18 “(2) which is produced by such person at a  
19 qualified paper product facility (as defined in section  
20 45R(d)(2)) during the 10-year period beginning on  
21 the later of the date of the enactment of this section  
22 or the date the facility was originally placed in serv-  
23 ice.

24 “(d) TIME FOR FILING CLAIMS; PERIOD COV-  
25 ERED.—

1           “(1) IN GENERAL.—A claim may be filed under  
2       this section by any person for any period—

3                   “(A) for which \$200 or more is payable,  
4               and

5                   “(B) which is not less than 1 week.

6       In the case of an electronic claim, this paragraph  
7       shall be applied without regard to subparagraph (A).

8           “(2) PAYMENT OF CLAIM.—Notwithstanding  
9       subsection (a), if the Secretary has not paid pursu-  
10      ant to a claim filed under this section within 45 days  
11      of the date of the filing of such claim (20 days in  
12      the case of an electronic claim), the claim shall be  
13      paid with interest from such date determined by  
14      using the overpayment rate and method under sec-  
15      tion 6621.

16          “(3) TIME FOR FILING CLAIM.—No claim filed  
17      under this subsection shall be allowed unless filed on  
18      or before the last day of the first quarter following  
19      the earliest quarter included in the claim.

20          “(e) COFIRING WITH FOSSIL FUELS.—In the case  
21      of fossil fuel burned in conjunction with any qualified bio-  
22      mass liquid, only the Btus attributable to the qualified bio-  
23      mass liquid may be taken into account under subsection  
24      (a).”.

25          (b) CONFORMING AMENDMENTS.—

1           (1) The table of sections for such subchapter B  
2       is amended by striking the item relating to section  
3       6429 and inserting the following new item:

      “Sec. 6429. Advance payments for liquid biomass used as a fuel at paper prod-  
      uct facilities.”.

4           (2) Section 1324(b)(2) of title 31, United  
5       States Code, is amended by inserting “6429,” after  
6       “6428,”.

7       (c) EFFECTIVE DATE.—The amendments made by  
8       this section shall apply to energy produced after December  
9       31, 2009, in taxable years ending after such date.

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