

111TH CONGRESS
1ST SESSION

S. 1341

To amend the Internal Revenue Code of 1986 to impose an excise tax
on certain proceeds received on SILO and LILO transactions.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2009

Mr. MENENDEZ introduced the following bill; which was read twice and
referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to impose
an excise tax on certain proceeds received on SILO and
LILO transactions.

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 “Close the SILO/LILO
5 Loophole Act of 2009”.

6 **SEC. 2. EXCISE TAX ON CERTAIN PROCEEDS RECEIVED ON**
7 **SILO AND LILO TRANSACTIONS.**

8 (a) IN GENERAL.—Subchapter F of chapter 42 of
9 subtitle D of the Internal Revenue Code of 1986 is amend-
10 ed by adding at the end the following new section:

1 **“SEC. 4965A. EXCISE TAX ON CERTAIN PROCEEDS RE-**
 2 **CEIVED ON SILO AND LILO TRANSACTIONS.**

3 “(a) IMPOSITION OF TAX.—In the case of any person
 4 other than a SILO/LILO lessee that receives any ineligible
 5 amount as a party to any SILO transaction or any LILO
 6 transaction, such person shall pay a tax for the taxable
 7 year in which such ineligible amounts are received.

8 “(b) AMOUNT OF TAX.—The amount of the tax im-
 9 posed under subsection (a) with respect to any person
 10 shall be an amount equal to the aggregate ineligible
 11 amounts received by such person in the taxable year.

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) INELIGIBLE AMOUNT.—The term ‘ineli-
 14 gible amount’ means, with respect to any SILO
 15 transaction or LILO transaction, the excess of—

16 “(A) the aggregate proceeds received by
 17 the taxpayer attributable to or arising from any
 18 remedial action relating to such transaction, or
 19 any consensual termination or rescission of any
 20 such transaction (including the value of any
 21 property received and any additional amounts
 22 purporting to indemnify or reimburse the tax-
 23 payer for taxes assessable on any amounts re-
 24 ceived), over

25 “(B) the aggregate proceeds described in
 26 subparagraph (A) that are received from third

1 parties (other than the SILO/LILO lessee) pur-
 2 suant to a payment arrangement (including a
 3 defeasance escrow arrangement) entered into at
 4 the time of such transaction in which the SILO/
 5 LILO lessee's payment obligations were eco-
 6 nomically defeased in whole or in part.

7 “(2) SILO TRANSACTION.—The term ‘SILO
 8 transaction’ means a purported sale-leaseback ar-
 9 rangement which is identified as a listed transaction
 10 in Notice 2005–13.

11 “(3) LILO TRANSACTION.—The term ‘LILO
 12 transaction’ means a transaction which is a ‘lease-
 13 in/lease-out’ transaction described in Revenue Rul-
 14 ings 99–14 and 2002–69 and identified as a listed
 15 transaction in Notice 2000–15, or which is substan-
 16 tially similar to such a transaction.

17 “(4) SILO/LILO LESSEE.—The term ‘SILO/
 18 LILO lessee’ means any lessee in a SILO trans-
 19 action or a LILO transaction that is—

20 “(A) a tax-exempt entity (within the mean-
 21 ing of section 168(h)(2)) or any other coopera-
 22 tive, nonprofit, limited dividend, or mutual as-
 23 sociation, or

1 “(B) any other person that does not derive
2 a substantial economic benefit from the tax
3 characterization of such transaction.

4 “(d) CERTAIN TRANSFERS DISREGARDED.—If any
5 person who is subject to the tax under subsection (a) is
6 a party to any transaction that results in the transfer of
7 such person’s rights with respect to a SILO transaction
8 or a LILO transaction to any other person who would,
9 but for this subsection, not be subject to the full amount
10 of the tax under subsection (a) with respect to such SILO
11 transaction or LILO transaction, then such transfer shall
12 be disregarded for purposes of this section and the tax-
13 payer shall continue to be treated as the recipient of any
14 ineligible amount.

15 “(e) REGULATORY AUTHORITY.—The Secretary is
16 authorized to promulgate regulations consistent with the
17 purposes of this section, including regulations to prevent
18 the avoidance of such purposes.

19 “(f) COORDINATION WITH OTHER TAXES AND PEN-
20 ALTIES.—The tax imposed by this section is in addition
21 to any other tax, addition to tax, or penalty imposed under
22 this title.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for subchapter F of chapter 42 of subtitle D of the Inter-

1 nal Revenue Code of 1986 is amended by adding at the
 2 end the following new item:

“Sec. 4965A. Excise tax on certain proceeds received on SILO and LILO transactions.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to amounts received after the date
 5 of the introduction of this Act, in taxable years ending
 6 after such date.

7 **SEC. 3. DENIAL OF DEDUCTION FOR COSTS OF CERTAIN**
 8 **ACTIONS RELATING TO SILO AND LILO**
 9 **TRANSACTIONS.**

10 (a) IN GENERAL.—Part IX of subchapter B of chap-
 11 ter 1 of the Internal Revenue Code of 1986 is amended
 12 by inserting after section 269B the following new section:

13 **“SEC. 269C. COSTS OF CERTAIN ACTIONS RELATING TO**
 14 **SILO AND LILO TRANSACTIONS.**

15 “(a) GENERAL RULE.—If any party to a SILO trans-
 16 action or a LILO transaction (other than a SILO/LILO
 17 lessee) brings a remedial action seeking to recover any in-
 18 eligible amount with respect to such transaction, in com-
 19 puting taxable income no deduction shall be allowed for
 20 any attorney fees or other costs attributable to such ac-
 21 tion.

22 “(b) DEFINITIONS.—For purposes of this section, the
 23 terms ‘SILO transaction’, ‘LILO transaction’, ‘SILO/

1 LILO lessee’, and ‘ineligible amount’ have the meanings
2 given such terms by section 4965A(c).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for part IX of subchapter B of chapter 1 of the Internal
5 Revenue Code of 1986 is amended by inserting after the
6 item relating to section 269B the following new item:

“Sec. 269C. Costs of certain actions relating to SILO and LILO trans-
actions.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to costs incurred after the date
9 of the introduction of this Act.

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