

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3439

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

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IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. LEWIS of Georgia (for himself, Mr. DAVIS of Illinois, Mr. PASCRELL, and  
Mr. MORAN of Virginia) 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 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”.

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

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

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

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

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

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

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

21 “(A) the aggregate proceeds received by  
 22 the taxpayer attributable to or arising from any  
 23 remedial action relating to such transaction (in-  
 24 cluding the value of any property received and  
 25 any additional amounts purporting to indemnify  
 26 or reimburse the taxpayer for taxes assessable

1 on any amounts received but excluding the ag-  
2 gregate proceeds received by the taxpayer at-  
3 tributable to or arising from any consensual  
4 termination or rescission of any such trans-  
5 action), over

6 “(B) the aggregate proceeds described in  
7 subparagraph (A) that are received from third  
8 parties (other than the SILO/LILO lessee) pur-  
9 suant to a payment arrangement (including a  
10 defeasance escrow arrangement) in which the  
11 SILO/LILO lessee’s payment obligations were  
12 economically defeased in whole or in part.

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

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

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

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

5           “(B) any other person that does not derive  
6           a substantial economic benefit from the tax  
7           characterization of such transaction.

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

19          “(e) REGULATORY AUTHORITY.—The Secretary is  
20          authorized to promulgate regulations consistent with the  
21          purposes of this section, including regulations to prevent  
22          the avoidance of such purposes.

23          “(f) COORDINATION WITH OTHER TAXES AND PEN-  
24          ALTIES.—The tax imposed by this section is in addition

1 to any other tax, addition to tax, or penalty imposed under  
2 this title.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for subchapter F of chapter 42 of subtitle D of the Inter-  
5 nal Revenue Code of 1986 is amended by adding at the  
6 end the following new item:

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

7 (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to amounts received after the date  
9 of the introduction of this Act, in taxable years ending  
10 after such date.

11 **SEC. 3. DENIAL OF DEDUCTION FOR COSTS OF CERTAIN**  
12 **ACTIONS RELATING TO SILO AND LILO**  
13 **TRANSACTIONS.**

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

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

19 “(a) GENERAL RULE.—If any party to a SILO trans-  
20 action or a LILO transaction (other than a SILO/LILO  
21 lessee) brings a remedial action seeking to recover any in-  
22 eligible amount with respect to such transaction, in com-  
23 puting taxable income no deduction shall be allowed for

1 any attorney fees or other costs attributable to such ac-  
2 tion.

3 “(b) DEFINITIONS.—For purposes of this section, the  
4 terms ‘SILO transaction’, ‘LILO transaction’, ‘SILO/  
5 LILO lessee’, and ‘ineligible amount’ have the meanings  
6 given such terms by section 4965A(c).”.

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

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

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

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