

109TH CONGRESS  
1ST SESSION

# S. 1631

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to rebate the tax collected back to the American consumer, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7, 2005

Mr. DORGAN (for himself, Mr. DODD, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and to rebate the tax collected back to the American consumer, and for other purposes.

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 “Windfall Profits Re-  
5       bate Act of 2005”.

6       **SEC. 2. WINDFALL PROFITS TAX.**

7       (a) IN GENERAL.—Subtitle E of the Internal Rev-  
8       enue Code of 1986 (relating to alcohol, tobacco, and cer-

tain other excise taxes) is amended by adding at the end thereof the following new chapter:

**“CHAPTER 56—WINDFALL PROFITS ON  
CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; removal price; adjusted base price; qualified investment.

“Sec. 5898. Special rules and definitions.

**5 “SEC. 5896. IMPOSITION OF TAX.**

6 “(a) IN GENERAL.—In addition to any other tax im-  
7 posed under this title, there is hereby imposed on any inte-  
8 grated oil company (as defined in section 291(b)(4)) an  
9 excise tax equal to the excess of—

10 “(1) the amount equal to 50 percent of the  
11 windfall profit from all barrels of taxable crude oil  
12 removed from the property during each taxable year,  
13 over

14 “(2) the amount of qualified investment by such  
15 company during such taxable year.

16 “(b) FRACTIONAL PART OF BARREL.—In the case of  
17 a fraction of a barrel, the tax imposed by subsection (a)  
18 shall be the same fraction of the amount of such tax im-  
19 posed on the whole barrel.

20 “(c) TAX PAID BY PRODUCER.—The tax imposed by  
21 this section shall be paid by the producer of the taxable  
22 crude oil.

1 **“SEC. 5897. WINDFALL PROFIT; REMOVAL PRICE; AD-**  
2 **JUSTED BASE PRICE; QUALIFIED INVEST-**  
3 **MENT.**

4 “(a) GENERAL RULE.—For purposes of this chapter,  
5 the term ‘windfall profit’ means the excess of the removal  
6 price of the barrel of taxable crude oil over the adjusted  
7 base price of such barrel.

8 “(b) REMOVAL PRICE.—For purposes of this chap-  
9 ter—

10 “(1) IN GENERAL.—Except as otherwise pro-  
11 vided in this subsection, the term ‘removal price’  
12 means the amount for which the barrel of taxable  
13 crude oil is sold.

14 “(2) SALES BETWEEN RELATED PERSONS.—In  
15 the case of a sale between related persons, the re-  
16 moval price shall not be less than the constructive  
17 sales price for purposes of determining gross income  
18 from the property under section 613.

19 “(3) OIL REMOVED FROM PROPERTY BEFORE  
20 SALE.—If crude oil is removed from the property be-  
21 fore it is sold, the removal price shall be the con-  
22 structive sales price for purposes of determining  
23 gross income from the property under section 613.

24 “(4) REFINING BEGUN ON PROPERTY.—If the  
25 manufacture or conversion of crude oil into refined

1 products begins before such oil is removed from the  
 2 property—

3 “(A) such oil shall be treated as removed  
 4 on the day such manufacture or conversion be-  
 5 gins, and

6 “(B) the removal price shall be the con-  
 7 structive sales price for purposes of determining  
 8 gross income from the property under section  
 9 613.

10 “(5) PROPERTY.—The term ‘property’ has the  
 11 meaning given such term by section 614.

12 “(c) ADJUSTED BASE PRICE DEFINED.—

13 “(1) IN GENERAL.—For purposes of this chap-  
 14 ter, the term ‘adjusted base price’ means \$40 for  
 15 each barrel of taxable crude oil plus an amount  
 16 equal to—

17 “(A) such base price, multiplied by

18 “(B) the inflation adjustment for the cal-  
 19 endar year in which the taxable crude oil is re-  
 20 moved from the property.

21 The amount determined under the preceding sen-  
 22 tence shall be rounded to the nearest cent.

23 “(2) INFLATION ADJUSTMENT.—

24 “(A) IN GENERAL.—For purposes of para-  
 25 graph (1), the inflation adjustment for any cal-

1           endar year after 2006 is the percentage by  
2           which—

3                   “(i) the implicit price deflator for the  
4                   gross national product for the preceding  
5                   calendar year, exceeds

6                   “(ii) such deflator for the calendar  
7                   year ending December 31, 2005.

8                   “(B) FIRST REVISION OF PRICE DEFLATOR  
9                   USED.—For purposes of subparagraph (A), the  
10                  first revision of the price deflator shall be used.

11                  “(d) QUALIFIED INVESTMENT.—For purposes of this  
12                  chapter—

13                   “(1) IN GENERAL.—The term ‘qualified invest-  
14                   ment’ means any amount paid or incurred with re-  
15                   spect to—

16                           “(A) section 263(c) costs,

17                           “(B) qualified refinery property (as defined  
18                           in section 179C(c) and determined without re-  
19                           gard to any termination date),

20                           “(C) any qualified facility described in  
21                           paragraph (1), (2), (3), or (4) of section 45(d)  
22                           (determined without regard to any placed in  
23                           service date),

24                           “(D) any facility for the production of al-  
25                           cohol used as a fuel (within the meaning of sec-

1           tion 40) or biodiesel or agri-biodiesel used as a  
2           fuel (within the meaning of section 40A).

3           “(2) SECTION 263(c) COSTS.—For purposes of  
4           this subsection, the term ‘section 263(c) costs’  
5           means intangible drilling and development costs in-  
6           curred by the taxpayer which (by reason of an elec-  
7           tion under section 263(c)) may be deducted as ex-  
8           penses for purposes of this title (other than this  
9           paragraph). Such term shall not include costs in-  
10          curred in drilling a nonproductive well.

11 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS .**

12          “(a) WITHHOLDING AND DEPOSIT OF TAX.—The  
13          Secretary shall provide such rules as are necessary for the  
14          withholding and deposit of the tax imposed under section  
15          5896 on any taxable crude oil.

16          “(b) RECORDS AND INFORMATION.—Each taxpayer  
17          liable for tax under section 5896 shall keep such records,  
18          make such returns, and furnish such information (to the  
19          Secretary and to other persons having an interest in the  
20          taxable crude oil) with respect to such oil as the Secretary  
21          may by regulations prescribe.

22          “(c) RETURN OF WINDFALL PROFIT TAX.—The Sec-  
23          retary shall provide for the filing and the time of such  
24          filing of the return of the tax imposed under section 5896.

25          “(d) DEFINITIONS.—For purposes of this chapter—

1           “(1) PRODUCER.—The term ‘producer’ means  
2           the holder of the economic interest with respect to  
3           the crude oil.

4           “(2) CRUDE OIL.—

5                 “(A) IN GENERAL.—The term ‘crude oil’  
6                 includes crude oil condensates and natural gas-  
7                 oline.

8                 “(B) EXCLUSION OF NEWLY DISCOVERED  
9                 OIL.—Such term shall not include any oil pro-  
10                duced from a well drilled after the date of the  
11                enactment of the Windfall Profits Rebate Act of  
12                2005, except with respect to any oil produced  
13                from a well drilled after such date on any prov-  
14                en oil or gas property (within the meaning of  
15                section 613A(c)(9)(A)).

16           “(3) BARREL.—The term ‘barrel’ means 42  
17           United States gallons.

18           “(e) ADJUSTMENT OF REMOVAL PRICE.—In deter-  
19           mining the removal price of oil from a property in the case  
20           of any transaction, the Secretary may adjust the removal  
21           price to reflect clearly the fair market value of oil removed.

22           “(f) REGULATIONS.—The Secretary shall prescribe  
23           such regulations as may be necessary or appropriate to  
24           carry out the purposes of this chapter.

1       “(g) TERMINATION.—This section shall not apply to  
2 taxable crude oil removed after the date which is 3 years  
3 after the date of the enactment of this section.”.

4       (b) CLERICAL AMENDMENT.—The table of chapters  
5 for subtitle E of the Internal Revenue Code of 1986 is  
6 amended by adding at the end the following new item:

“CHAPTER 56. Windfall Profit on Crude Oil.”.

7       (c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—  
8 The first sentence of section 164(a) of the Internal Rev-  
9 enue Code of 1986 (relating to deduction for taxes) is  
10 amended by inserting after paragraph (5) the following  
11 new paragraph:

12               “(6) The windfall profit tax imposed by section  
13 5896.”.

14       (d) EFFECTIVE DATE.—

15               (1) IN GENERAL.—The amendments made by  
16 this section shall apply to crude oil removed after  
17 the date of the enactment of this Act, in taxable  
18 years ending after such date.

19               (2) TRANSITIONAL RULES.—For the period  
20 ending December 31, 2005, the Secretary of the  
21 Treasury or the Secretary’s delegate shall prescribe  
22 rules relating to the administration of chapter 56 of  
23 the Internal Revenue Code of 1986. To the extent  
24 provided in such rules, such rules shall supplement  
25 or supplant for such period the administrative provi-



1 sions contained in chapter 56 of such Code (or in so  
2 much of subtitle F of such Code as relates to such  
3 chapter 56).

4 **SEC. 3. ENERGY CONSUMER REBATE.**

5 (a) IN GENERAL.—Subchapter B of chapter 65 of the  
6 Internal Revenue Code of 1986 (relating to rules of special  
7 application in the case of abatements, credits, and re-  
8 funds) is amended by adding at the end the following new  
9 section:

10 **“SEC. 6430. ENERGY CONSUMER REBATE.**

11 “(a) GENERAL RULE.—Except as otherwise provided  
12 in this section, each individual shall be treated as having  
13 made a payment against the tax imposed by chapter 1 for  
14 each taxable year beginning after December 31, 2005, in  
15 an amount equal to the lesser of—

16 “(1) the amount of the taxpayer’s liability for  
17 tax for such taxpayer’s preceding taxable year, or

18 “(2) the applicable amount.

19 “(b) LIABILITY FOR TAX.—For purposes of this sec-  
20 tion, the liability for tax for any taxable year shall be the  
21 excess (if any) of—

22 “(1) the sum of—

23 “(A) the taxpayer’s regular tax liability  
24 (within the meaning of section 26(b)) for the  
25 taxable year,

1           “(B) the tax imposed by section 55(a) with  
2           respect to such taxpayer for the taxable year,  
3           and

4           “(C) the taxpayer’s social security taxes  
5           (within the meaning of section 24(d)(2)) for the  
6           taxable year, over

7           “(2) the sum of the credits allowable under part  
8           IV of subchapter A of chapter 1 (other than the  
9           credits allowable under subpart C thereof, relating to  
10          refundable credits) for the taxable year.

11          “(c) APPLICABLE AMOUNT.—For purposes of this  
12          section, the applicable amount for any taxpayer shall be  
13          determined by the Secretary not later than the date speci-  
14          fied in subsection (d)(1) taking into account the number  
15          of such taxpayers and the amount of revenues in the  
16          Treasury resulting from the tax imposed by section 5896  
17          for the calendar year preceding the taxable year.

18          “(d) DATE PAYMENT DEEMED MADE.—

19                  “(1) IN GENERAL.—The payment provided by  
20                  this section shall be deemed made on February 1 of  
21                  the calendar year ending with or within the taxable  
22                  year.

23                  “(2) REMITTANCE OF PAYMENT.—The Sec-  
24                  retary shall remit to each taxpayer the payment de-  
25                  scribed in paragraph (1) not later that the date

1 which is 30 days after the date specified in para-  
2 graph (1).

3 “(e) CERTAIN PERSONS NOT ELIGIBLE.—This sec-  
4 tion shall not apply to—

5 “(1) any individual with respect to whom a de-  
6 duction under section 151 is allowable to another  
7 taxpayer for a taxable year beginning in the cal-  
8 endar year in which such individual’s taxable year  
9 begins,

10 “(2) any estate or trust, or

11 “(3) any nonresident alien individual.”.

12 (b) CONFORMING AMENDMENT.—Section 1324(b)(2)  
13 of title 31, United States Code, is amended by inserting  
14 before the period “, or enacted by the Windfall Profits  
15 Rebate Act of 2005”.

16 (c) CLERICAL AMENDMENT.—The table of sections  
17 for subchapter B of chapter 65 of the Internal Revenue  
18 Code of 1986 is amended by adding at the end the fol-  
19 lowing new item:

“Sec. 6430. Energy consumer rebate.”.

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall take effect on the date of the enactment  
22 of this Act.

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