II

Calendar No. 42

112TH CONGRESS
1ST SESSION

S. 940

To reduce the Federal budget deficit by closing big oil tax loopholes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2011

Mr. MENENDEZ (for himself, Mrs. MCCASKILL, Mr. TESTER, Mr. BROWN of Ohio, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mrs. MURRAY, Mr. LEAHY, Mr. REED, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. WHITEHOUSE, Mrs. BOXER, Ms. MIKULSKI, Mrs. GILLIBRAND, Mr. COONS, Mr. ROCKEFELLER, Mr. BLUMENTHAL, Mr. FRANKEN, Mr. CARDIN, Ms. STABENOW, Mr. MERKLEY, Mr. JOHNSON of South Dakota, Mr. SANDERS, Mrs. SHAHEEN, Mrs. FEINSTEIN, and Ms. KLOBUCHAR) introduced the following bill; which was read the first time

MAY 11, 2011

Read the second time and placed on the calendar

A BILL

To reduce the Federal budget deficit by closing big oil tax loopholes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Close Big Oil Tax Loopholes Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Sense of Senate on high gas prices.

TITLE I—CLOSE BIG OIL TAX LOOPHOLES

Sec. 101. Modifications of foreign tax credit rules applicable to major integrated oil companies which are dual capacity taxpayers.
Sec. 102. Limitation on section 199 deduction attributable to oil, natural gas, or primary products thereof.
Sec. 103. Limitation on deduction for intangible drilling and development costs.
Sec. 104. Limitation on percentage depletion allowance for oil and gas wells.
Sec. 105. Limitation on deduction for tertiary injectants.

TITLE II—OUTER CONTINENTAL SHELF OIL AND NATURAL GAS

Sec. 201. Repeal of outer Continental Shelf deep water and deep gas royalty relief.

TITLE III—MISCELLANEOUS

Sec. 301. Deficit reduction.
Sec. 302. Budgetary effects.

SEC. 2. FINDINGS.

Congress finds that—

(1) gas prices have risen significantly largely in response to unrest in north Africa and the Middle East, unrest that speculators are capitalizing on to increase oil futures prices and make huge profits;

(2) high gas prices are hurting the quality of life of people of the United States, cutting into savings, and jeopardizing jobs and the economic recovery of the United States;

(3) implementation of the regulatory reforms enacted by Congress in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) to prevent energy market manipulation and control excessive speculation has been delayed and has been threatened with funding reductions in the House of Representatives;

(4) the United States is producing more oil than any time in the last 13 years and companies hold abundant inventories of oil, but the United States is still importing more than 11,000,000 barrels of oil per day and the Energy Information Administration projects that full production in all onshore and offshore areas would reduce gas prices by only 3 cents per gallon by 2030;

(5) domestic refining capacity now exceeds United States demand for refined petroleum products, resulting in increased idle refinery capacity;

(6) oil companies are sitting idly on approximately 60,000,000 acres of leased Federal lands and waters containing more than 11,000,000,000 barrels of oil and 59,000,000,000,000 cubic feet of natural gas;

(7) the United States possesses less than 2 percent of the proven oil reserves of the world, yet con-

sumes an unsustainable 25 percent of the oil production of the world;

(8) the economy of the United States suffers huge net losses in jobs and productivity from the growing annual trade deficit in energy, due mainly to the outflow of $250,000,000,000 or more to pay for foreign oil;

(9) world oil prices have risen steadily since the slow beginning of the global economic recovery and, absent major efficiency or conservation improvements or deployment of alternative fuels, those oil prices are projected to remain well above $100 per barrel or higher as world demand grows as China, India and other countries industrialize;

(10) the oil production policies of cartel of the Organization of the Petroleum Exporting Countries (OPEC) are a large determinant of the world price of oil, so the economy of the United States will be affected by decisions of OPEC as long as the United States depends on oil for a significant portion of the energy consumption of the United States;

(11) the major oil companies have accumulated more than $1,000,000,000,000 in net profits over the last 10 years and collected more than $40,000,000,000 in tax breaks during the same pe-

riod, but have invested negligible amounts of those funds into research and development of the production of clean and renewable fuels made in the United States, leaving consumers with few if any choices at the pump; and

(12) in the Energy Independence and Security Act of 2007 (42 U.S.C. 17001 et seq.), Congress increased fuel economy standards for the first time in 30 years and established ambitious requirements for domestic biofuels, actions that have reduced oil consumption and reduced upward pressure on gas prices.

SEC. 3. SENSE OF SENATE ON HIGH GAS PRICES.

It is the sense of the Senate that—

(1) the President and Administration should be commended for recognizing the severity of high gas prices and for taking appropriate actions to help reduce gas prices, including actions—

(A) to move forward with expeditious and responsible domestic production in the Gulf of Mexico and elsewhere;

(B) to form a Task Force led by the Department of Justice to investigate and eliminate oil and gas price gouging and market manipulation;

(C) to establish a national oil savings goal to cut imports by 33 percent by 2025;

(D) to call for 1,000,000 electric vehicles to be on the road by 2015;

(E) to harmonize corporate average fuel standards under section 32902 of title 49, United States Code, (CAFE) and carbon pollution standards to achieve 1,800,000,000 barrels in oil savings from new vehicles built before 2017, and working with stakeholders to increase those savings from future year vehicles;

(F) to establish the National Clean Fleets Partnership and Green Fleet Initiative to reduce diesel and gasoline use in fleets by incorporating electric vehicles, alternative fuels like natural gas, and efficiency measures; and

(G) to clarify and expand the use of E-15 fuel for new motor vehicles;

(2) Congress should take additional actions to complement the efforts of the President, including enacting provisions—

(A) to encourage diligent and responsible development of domestic oil and gas resources onshore and off-shore;

(B) to eliminate subsidies for major oil and gas companies and use the savings to promote research, development, and deployment of affordable alternative fuels and vehicles;

(C) to give consumers more choices at the pump and incentives for buying vehicles that displace petroleum consumption; and

(D) to direct and fund the Commodity Futures Trading Commission and the Federal Trade Commission to rapidly implement the energy consumer protection requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376);

(3) the Organization of the Petroleum Exporting Countries (OPEC) should contribute to the stabilization of world oil markets and prices and reduce the burden of high gasoline prices borne by the consumers in the United States by using existing idle oil production capacity to compensate for any supply shortages experienced in member countries; and

(4) the economic, environmental, and national security of the United States depend on a sustained effort to drastically reduce and eventually eliminate the dependency of the United States on oil.

TITLE I—CLOSE BIG OIL TAX LOOPHOLES

SEC. 101. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO MAJOR INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) SPECIAL RULES RELATING TO MAJOR INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a major integrated oil company (as defined in section 167(h)(5)(B)) to a foreign country or possession of the United States for any period shall not be considered a tax—

"(A) if, for such period, the foreign country or possession does not impose a generally applicable income tax, or

"(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

"(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

"(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

Nothing in this paragraph shall be construed to imply the proper treatment of any such amount not in excess of the amount determined under subparagraph (B).

"(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section

shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 102. LIMITATION ON SECTION 199 DEDUCTION ATTRIBUTABLE TO OIL, NATURAL GAS, OR PRIMARY PRODUCTS THEREOF.

(a) DENIAL OF DEDUCTION.—Paragraph (4) of section 199(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(E) SPECIAL RULE FOR CERTAIN OIL AND GAS INCOME.—In the case of any taxpayer who is a major integrated oil company (as defined in section 167(h)(5)(B)) for the taxable year, the term 'domestic production gross receipts' shall not include gross receipts from the production, transportation, or distribution of oil, natural gas, or any primary product (within the meaning of subsection (d)(9)) thereof.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 103. LIMITATION ON DEDUCTION FOR INTANGIBLE DRILLING AND DEVELOPMENT COSTS.

(a) IN GENERAL.—Section 263(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''This subsection shall not apply to amounts paid or incurred by a taxpayer in any taxable year in which such taxpayer is a major integrated oil company (as defined in section 167(h)(5)(B)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2011.

SEC. 104. LIMITATION ON PERCENTAGE DEPLETION ALLOWANCE FOR OIL AND GAS WELLS.

(a) IN GENERAL.—Section 613A of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) APPLICATION WITH RESPECT TO MAJOR INTEGRATED OIL COMPANIES.—In the case of any taxable year in which the taxpayer is a major integrated oil company (as defined in section 167(h)(5)(B)), the allowance for percentage depletion shall be zero.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 105. LIMITATION ON DEDUCTION FOR TERTIARY INJECTANTS.

(a) IN GENERAL.—Section 193 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(d) APPLICATION WITH RESPECT TO MAJOR INTEGRATED OIL COMPANIES.—This section shall not apply to amounts paid or incurred by a taxpayer in any taxable year in which such taxpayer is a major integrated oil company (as defined in section 167(h)(5)(B)).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2011.

TITLE II—OUTER CONTINENTAL SHELF OIL AND NATURAL GAS

SEC. 201. REPEAL OF OUTER CONTINENTAL SHELF DEEP WATER AND DEEP GAS ROYALTY RELIEF.

(a) IN GENERAL.—Sections 344 and 345 of the Energy Policy Act of 2005 (42 U.S.C. 15904, 15905) are repealed.

(b) ADMINISTRATION.—The Secretary of the Interior shall not be required to provide for royalty relief in the lease sale terms beginning with the first lease sale held on or after the date of enactment of this Act for which a final notice of sale has not been published.

TITLE III—MISCELLANEOUS

SEC. 301. DEFICIT REDUCTION.

The net amount of any savings realized as a result of the enactment of this Act and the amendments made by this Act (after any expenditures authorized by this Act and the amendments made by this Act) shall be deposited in the Treasury and used for Federal budget deficit reduction or, if there is no Federal budget deficit, for reducing the Federal debt in such manner as the Secretary of the Treasury considers appropriate.

SEC. 302. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

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