

106TH CONGRESS
1ST SESSION

S. 325

To amend the Internal Revenue Code of 1986 to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1999

Mrs. HUTCHISON (for herself, Mr. DOMENICI, Mr. NICKLES, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. BREAUX, Mr. BROWNBACK, Mr. COCHRAN, Mr. CONRAD, Mr. ENZI, Mr. GRAMM, Mr. INHOFE, Ms. LANDRIEU, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. STEVENS, Mr. THOMAS, Mr. BURNS, and Mr. LOTT) 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 provide tax incentives to encourage production of oil and gas within the United States, 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 “United States Energy
5 Economic Growth Act”.

1 **TITLE I—PRODUCTION FROM**
 2 **MARGINAL AND INACTIVE**
 3 **WELLS**

4 **SEC. 101. TAX CREDIT FOR MARGINAL DOMESTIC OIL AND**
 5 **NATURAL GAS WELL PRODUCTION.**

6 (a) CREDIT FOR PRODUCING OIL AND GAS FROM
 7 MARGINAL WELLS.—Subpart D of part IV of subchapter
 8 A of chapter 1 of the Internal Revenue Code of 1986 (re-
 9 lating to business credits) is amended by adding at the
 10 end the following new section:

11 **“SEC. 45D. CREDIT FOR PRODUCING OIL AND GAS FROM**
 12 **MARGINAL WELLS.**

13 “(a) GENERAL RULE.—For purposes of section 38,
 14 the marginal well production credit for any taxable year
 15 is an amount equal to the product of—

16 “(1) the credit amount, and

17 “(2) the qualified crude oil production and the
 18 qualified natural gas production which is attrib-
 19 utable to the taxpayer.

20 “(b) CREDIT AMOUNT.—For purposes of this
 21 section—

22 “(1) IN GENERAL.—The credit amount is—

23 “(A) \$3 per barrel of qualified crude oil
 24 production, and

1 “(B) 50 cents per 1,000 cubic feet of
2 qualified natural gas production.

3 “(2) REDUCTION AS OIL AND GAS PRICES IN-
4 CREASE.—

5 “(A) IN GENERAL.—The \$3 and 50 cents
6 amounts under paragraph (1) shall each be re-
7 duced (but not below zero) by an amount which
8 bears the same ratio to such amount (deter-
9 mined without regard to this paragraph) as—

10 “(i) the excess (if any) of the applica-
11 ble reference price over \$14 (\$1.56 for
12 qualified natural gas production), bears to

13 “(ii) \$3 (\$0.33 for qualified natural
14 gas production).

15 The applicable reference price for a taxable
16 year is the reference price for the calendar year
17 preceding the calendar year in which the tax-
18 able year begins.

19 “(B) INFLATION ADJUSTMENT.—In the
20 case of any taxable year beginning in a calendar
21 year after 2000, each of the dollar amounts
22 contained in subparagraph (A) shall be in-
23 creased to an amount equal to such dollar
24 amount multiplied by the inflation adjustment
25 factor for such calendar year (determined under

1 section 43(b)(3)(B) by substituting ‘1999’ for
 2 ‘1990’).

3 “(C) REFERENCE PRICE.—For purposes of
 4 this paragraph, the term ‘reference price’
 5 means, with respect to any calendar year—

6 “(i) in the case of qualified crude oil
 7 production, the reference price determined
 8 under section 29(d)(2)(C), and

9 “(ii) in the case of qualified natural
 10 gas production, the Secretary’s estimate of
 11 the annual average wellhead price per
 12 1,000 cubic feet for all domestic natural
 13 gas.

14 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
 15 PRODUCTION.—For purposes of this section—

16 “(1) IN GENERAL.—The terms ‘qualified crude
 17 oil production’ and ‘qualified natural gas production’
 18 mean domestic crude oil or natural gas which is pro-
 19 duced from a marginal well.

20 “(2) LIMITATION ON AMOUNT OF PRODUCTION
 21 WHICH MAY QUALIFY.—

22 “(A) IN GENERAL.—Crude oil or natural
 23 gas produced during any taxable year from any
 24 well shall not be treated as qualified crude oil
 25 production or qualified natural gas production

1 to the extent production from the well during
 2 the taxable year exceeds 1,095 barrels or barrel
 3 equivalents.

4 “(B) PROPORTIONATE REDUCTIONS.—

5 “(i) SHORT TAXABLE YEARS.—In the
 6 case of a short taxable year, the limitations
 7 under this paragraph shall be proportion-
 8 ately reduced to reflect the ratio which the
 9 number of days in such taxable year bears
 10 to 365.

11 “(ii) WELLS NOT IN PRODUCTION EN-
 12 TIRE YEAR.—In the case of a well which is
 13 not capable of production during each day
 14 of a taxable year, the limitations under
 15 this paragraph applicable to the well shall
 16 be proportionately reduced to reflect the
 17 ratio which the number of days of produc-
 18 tion bears to the total number of days in
 19 the taxable year.

20 “(3) DEFINITIONS.—

21 “(A) MARGINAL WELL.—The term ‘mar-
 22 ginal well’ means a domestic well which during
 23 the taxable year has marginal production (as
 24 defined in section 613A(c)(6)).

1 “(B) CRUDE OIL, ETC.—The terms ‘crude
2 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
3 the meanings given such terms by section
4 613A(e).

5 “(C) BARREL EQUIVALENT.—The term
6 ‘barrel equivalent’ means, with respect to natu-
7 ral gas, a conversion ratio of 6,000 cubic feet
8 of natural gas to 1 barrel of crude oil.

9 “(d) OTHER RULES.—

10 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
11 PAYER.—In the case of a marginal well in which
12 there is more than one owner of operating interests
13 in the well and the crude oil or natural gas produc-
14 tion exceeds the limitation under subsection (c)(2),
15 qualifying crude oil production or qualifying natural
16 gas production attributable to the taxpayer shall be
17 determined on the basis of the ratio which tax-
18 payer’s revenue interest in the production bears to
19 the aggregate of the revenue interests of all operat-
20 ing interest owners in the production.

21 “(2) OPERATING INTEREST REQUIRED.—Any
22 credit under this section may be claimed only on
23 production which is attributable to the holder of an
24 operating interest.

1 “(3) PRODUCTION FROM NONCONVENTIONAL
 2 SOURCES EXCLUDED.—In the case of production
 3 from a marginal well which is eligible for the credit
 4 allowed under section 29 for the taxable year, no
 5 credit shall be allowable under this section unless
 6 the taxpayer elects not to claim the credit under sec-
 7 tion 29 with respect to the well.”.

8 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
 9 tion 38(b) of such Code is amended by striking “plus”
 10 at the end of paragraph (11), by striking the period at
 11 the end of paragraph (12) and inserting “, plus”, and by
 12 adding at the end the following new paragraph:

13 “(13) the marginal oil and gas well production
 14 credit determined under section 45D(a).”.

15 (c) CREDIT ALLOWED AGAINST REGULAR AND MINI-
 16 MUM TAX.—

17 (1) IN GENERAL.—Subsection (c) of section 38
 18 of such Code (relating to limitation based on amount
 19 of tax) is amended by redesignating paragraph (3)
 20 as paragraph (4) and by inserting after paragraph
 21 (2) the following new paragraph:

22 “(3) SPECIAL RULES FOR MARGINAL OIL AND
 23 GAS WELL PRODUCTION CREDIT.—

24 “(A) IN GENERAL.—In the case of the
 25 marginal oil and gas well production credit—

1 “(i) this section and section 39 shall
 2 be applied separately with respect to the
 3 credit, and

4 “(ii) in applying paragraph (1) to the
 5 credit—

6 “(I) subparagraphs (A) and (B)
 7 thereof shall not apply, and

8 “(II) the limitation under para-
 9 graph (1) (as modified by subclause
 10 (I)) shall be reduced by the credit al-
 11 lowed under subsection (a) for the
 12 taxable year (other than the marginal
 13 oil and gas well production credit).

14 “(B) MARGINAL OIL AND GAS WELL PRO-
 15 Duction CREDIT.—For purposes of this sub-
 16 section, the term ‘marginal oil and gas well pro-
 17 duction credit’ means the credit allowable under
 18 subsection (a) by reason of section 45D(a).”.

19 (2) CONFORMING AMENDMENT.—Subclause (II)
 20 of section 38(c)(2)(A)(ii) of such Code is amended
 21 by inserting “or the marginal oil and gas well pro-
 22 duction credit” after “employment credit”.

23 (d) CARRYBACK.—Subsection (a) of section 39 of
 24 such Code (relating to carryback and carryforward of un-

1 used credits generally) is amended by adding at the end
 2 the following new paragraph:

3 “(3) 10-YEAR CARRYBACK FOR MARGINAL OIL
 4 AND GAS WELL PRODUCTION CREDIT.—In the case
 5 of the marginal oil and gas well production credit—

6 “(A) this section shall be applied sepa-
 7 rately from the business credit (other than the
 8 marginal oil and gas well production credit),

9 “(B) paragraph (1) shall be applied by
 10 substituting ‘10 taxable years’ for ‘1 taxable
 11 years’ in subparagraph (A) thereof, and

12 “(C) paragraph (2) shall be applied—

13 “(i) by substituting ‘31 taxable years’
 14 for ‘21 taxable years’ in subparagraph (A)
 15 thereof, and

16 “(ii) by substituting ‘30 taxable years’
 17 for ‘20 taxable years’ in subparagraph (B)
 18 thereof.”

19 (e) COORDINATION WITH SECTION 29.—Section
 20 29(a) of such Code is amended by striking “There” and
 21 inserting “At the election of the taxpayer, there”.

22 (f) CLERICAL AMENDMENT.—The table of sections
 23 for subpart D of part IV of subchapter A of chapter 1
 24 of such Code is amended by adding at the end the follow-
 25 ing item:

“45D. Credit for producing oil and gas from marginal wells.”

1 (g) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to production after the date of the
 3 enactment of this Act.

4 **SEC. 102. EXCLUSION OF CERTAIN AMOUNTS RECEIVED**
 5 **FROM RECOVERED INACTIVE WELLS.**

6 (a) IN GENERAL.—Part III of subchapter B of chap-
 7 ter 1 of the Internal Revenue Code of 1986 (relating to
 8 items specifically excluded from gross income) is amended
 9 by redesignating section 139 as section 140 and by insert-
 10 ing after section 138 the following new section:

11 **“SEC. 139. OIL OR GAS PRODUCED FROM A RECOVERED IN-**
 12 **ACTIVE WELL.**

13 “(a) IN GENERAL.—Gross income does not include
 14 income attributable to independent producer oil from a re-
 15 covered inactive well.

16 “(b) DEFINITIONS.—For purposes of this section—

17 “(1) INDEPENDENT PRODUCER OIL.—The term
 18 ‘independent producer oil’ means crude oil or natu-
 19 ral gas in which the economic interest of the inde-
 20 pendent producer is attributable to an operating
 21 mineral interest (within the meaning of section
 22 614(d)), overriding royalty interest, production pay-
 23 ment, net profits interest, or similar interest.

1 “(2) CRUDE OIL AND NATURAL GAS.—The
 2 terms ‘crude oil’ and ‘natural gas’ have the mean-
 3 ings given such terms by section 613A(e).

4 “(3) RECOVERED INACTIVE WELL.—The term
 5 ‘recovered inactive well’ means a well if—

6 “(A) throughout the time period beginning
 7 any time prior to January 15, 1999, and ending
 8 on such date, such well is inactive or has been
 9 plugged and abandoned, as determined by the
 10 agency of the State in which such well is lo-
 11 cated that is responsible for regulating such
 12 wells, and

13 “(B) during the 5-year period beginning on
 14 the date of the enactment of this section, such
 15 well resumes producing crude oil or natural gas.

16 “(4) INDEPENDENT PRODUCER.—The term
 17 ‘independent producer’ means a producer of crude
 18 oil or natural gas whose allowance for depletion is
 19 determined under section 613A(c).

20 “(c) DEDUCTIONS.—No deductions directly con-
 21 nected with amounts excluded from gross income by sub-
 22 section (a) shall be allowed.

23 “(d) ELECTION.—

24 “(1) IN GENERAL.—This section shall apply for
 25 any taxable year only at the election of the taxpayer.

1 “(2) MANNER.—Such election shall be made, in
 2 accordance with regulations prescribed by the Sec-
 3 retary, not later than the time prescribed for filing
 4 the return (including extensions thereof) and shall
 5 be made annually on a property-by-property basis.”

6 (b) MINIMUM TAX.—Section 56(g)(4)(B) of the In-
 7 ternal Revenue Code of 1986 is amended by adding at the
 8 end the following new clause:

9 “(iii) INACTIVE WELLS.—In the case
 10 of income attributable to independent pro-
 11 ducers of oil recovered from an inactive
 12 well, clause (i) shall not apply to any
 13 amount allowable as an exclusion under
 14 section 139.”

15 (c) CLERICAL AMENDMENT.—The table of sections
 16 for part III of subchapter B of chapter 1 of such Code
 17 is amended by striking the item relating to section 139
 18 and inserting the following:

 “Sec. 139. Oil or gas produced from a recovered inactive well.
 “Sec. 140. Cross references to other Acts.”

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years ending after the
 21 date of the enactment of this Act.

1 **TITLE II—OTHER INCENTIVES**

2 **SEC. 201. ELECTION TO EXPENSE GEOLOGICAL AND GEO-** 3 **PHYSICAL EXPENDITURES.**

4 (a) IN GENERAL.—Section 263 of the Internal Reve-
 5 nue Code of 1986 (relating to capital expenditures) is
 6 amended by adding at the end the following new sub-
 7 section:

8 “(j) GEOLOGICAL AND GEOPHYSICAL EXPENDI-
 9 TURES FOR DOMESTIC OIL AND GAS WELLS.—Notwith-
 10 standing subsection (a), a taxpayer may elect to treat geo-
 11 logical and geophysical expenses incurred in connection
 12 with the exploration for, or development of, oil or gas with-
 13 in the United States (as defined in section 638) as ex-
 14 penses which are not chargeable to capital account. Any
 15 expenses so treated shall be allowed as a deduction in the
 16 taxable year in which paid or incurred.”

17 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)
 18 of the Internal Revenue Code of 1986 is amended by in-
 19 serting “263(j),” after “263(i),”.

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
 22 this section shall apply to expenses paid or incurred
 23 after the date of the enactment of this Act.

24 (2) TRANSITION RULE.—In the case of any ex-
 25 penses described in section 263(j) of the Internal

1 Revenue Code of 1986, as added by this section,
 2 which were paid or incurred on or before the date
 3 of the enactment of this Act, the taxpayer may elect,
 4 at such time and in such manner as the Secretary
 5 of the Treasury may prescribe, to amortize the
 6 unamortized portion of such expenses over the 36-
 7 month period beginning with the month in which the
 8 date of the enactment of this Act occurs. For pur-
 9 poses of this paragraph, the unamortized portion of
 10 any expense is the amount remaining unamortized
 11 as of the first day of the 36-month period.

12 **SEC. 202. ELECTION TO EXPENSE DELAY RENTAL PAY-**
 13 **MENTS.**

14 (a) IN GENERAL.—Section 263 of the Internal Reve-
 15 nue Code of 1986 (relating to capital expenditures), as
 16 amended by section 201(a), is amended by adding at the
 17 end the following new subsection:

18 “(k) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL
 19 AND GAS WELLS.—

20 “(1) IN GENERAL.—Notwithstanding subsection
 21 (a), a taxpayer may elect to treat delay rental pay-
 22 ments incurred in connection with the development
 23 of oil or gas within the United States (as defined in
 24 section 638) as payments which are not chargeable
 25 to capital account. Any payments so treated shall be

1 allowed as a deduction in the taxable year in which
2 paid or incurred.

3 “(2) DELAY RENTAL PAYMENTS.—For purposes
4 of paragraph (1), the term ‘delay rental payment’
5 means an amount paid for the privilege of deferring
6 development of an oil or gas well.”

7 (b) CONFORMING AMENDMENT.—Section 263A(c)(3)
8 of the Internal Revenue Code of 1986, as amended by sec-
9 tion 201(b), is amended by inserting “263(k),” after
10 “263(j),”.

11 (c) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to payments made or in-
14 curred after the date of the enactment of this Act.

15 (2) TRANSITION RULE.—In the case of any
16 payments described in section 263(k) of the Internal
17 Revenue Code of 1986, as added by this section,
18 which were made or incurred on or before the date
19 of the enactment of this Act, the taxpayer may elect,
20 at such time and in such manner as the Secretary
21 of the Treasury may prescribe, to amortize the
22 unamortized portion of such payments over the 36-
23 month period beginning with the month in which the
24 date of the enactment of this Act occurs. For pur-
25 poses of this paragraph, the unamortized portion of

1 any payment is the amount remaining unamortized
2 as of the first day of the 36-month period.

3 **SEC. 203. EXTENSION OF SPUDDING RULE.**

4 (a) IN GENERAL.—Section 461(i)(2)(A) of the Inter-
5 nal Revenue Code of 1986 (relating to special rule for
6 spudding of oil or gas wells) is amended by striking “90th
7 day” and inserting “180th day”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 December 31, 1998.

11 **SEC. 204. ENHANCED OIL RECOVERY CREDIT EXTENDED TO**
12 **CERTAIN NONTERTIARY RECOVERY METH-**
13 **ODS.**

14 (a) IN GENERAL.—Clause (i) of section 43(c)(2)(A)
15 of the Internal Revenue Code of 1986 (defining qualified
16 enhanced oil recovery project) is amended to read as fol-
17 lows:

18 “(i) which involves the application (in
19 accordance with sound engineering prin-
20 ciples) of—

21 “(I) one or more tertiary recov-
22 ery methods (as defined in section
23 193(b)(3)) which can reasonably be
24 expected to result in more than an in-
25 significant increase in the amount of

1 crude oil which will ultimately be re-
 2 covered, or

3 “(II) one or more nontertiary re-
 4 covery methods which are required to
 5 recover oil with traditionally immobile
 6 characteristics or from formations
 7 which have proven to be uneconomical
 8 or noncommercial under conventional
 9 recovery methods.”

10 (b) QUALIFIED NONTERTIARY RECOVERY METH-
 11 ODS.—Section 43(c)(2) of the Internal Revenue Code of
 12 1986 is amended by adding at the end the following new
 13 subparagraphs:

14 “(C) QUALIFIED NONTERTIARY RECOVERY
 15 METHOD.—For purposes of this paragraph—

16 “(i) IN GENERAL.—The term ‘quali-
 17 fied nontertiary recovery method’ means
 18 any recovery method described in clause
 19 (ii), (iii), or (iv), or any combination there-
 20 of.

21 “(ii) ENHANCED GRAVITY DRAINAGE
 22 (EGD) METHODS.—The methods described
 23 in this clause are as follows:

24 “(I) HORIZONTAL DRILLING.—
 25 The drilling of horizontal, rather than

vertical, wells to penetrate any hydrocarbon-bearing formation which has an average in situ calculated permeability to fluid flow of less than or equal to 12 or less millidarcies and which has been demonstrated by use of a vertical wellbore to be uneconomical unless drilled with lateral horizontal lengths in excess of 1,000 feet.

“(II) GRAVITY DRAINAGE.—The production of oil by gravity flow from drainholes that are drilled from a shaft or tunnel dug within or below the oil-bearing zone.

“(iii) marginally economic reservoir repressurization (MERR) methods.—The methods described in this clause are as follows, except that this clause shall only apply to the first 1,000,000 barrels produced in any project:

“(I) CYCLIC GAS INJECTION.—

The increase or maintenance of pressure by injection of hydrocarbon gas into the reservoir from which it was originally produced.

1 “(II) FLOODING.—The injection
2 of water into an oil reservoir to dis-
3 place oil from the reservoir rock and
4 into the bore of a producing well.

5 “(iv) OTHER METHODS.—Any method
6 used to recover oil having an average lab-
7 oratory measured air permeability less
8 than or equal to 100 millidarcies when
9 averaged over the productive interval being
10 completed, or an in situ calculated per-
11 meability to fluid flow less than or equal to
12 12 millidarcies or oil defined by the De-
13 partment of Energy as being immobile.

14 “(D) AUTHORITY TO ADD OTHER NONTER-
15 TIARY RECOVERY METHODS.—The Secretary
16 shall provide procedures under which—

17 “(i) the Secretary may treat methods
18 not described in clause (ii), (iii), or (iv) of
19 subparagraph (C) as qualified nontertiary
20 recovery methods, and

21 “(ii) a taxpayer may request the Sec-
22 retary to treat any method not so de-
23 scribed as a qualified nontertiary recovery
24 method.

1 The Secretary may only specify methods as
 2 qualified nontertiary recovery methods under
 3 this subparagraph if the Secretary determines
 4 that such specification is consistent with the
 5 purposes of subparagraph (C) and will result in
 6 greater production of oil and natural gas.”

7 (c) CONFORMING AMENDMENT.—Clause (iii) of sec-
 8 tion 43(c)(2)(A) of the Internal Revenue Code of 1986
 9 is amended to read as follows:

10 “(iii) with respect to which—

11 “(I) in the case of a tertiary re-
 12 covery method, the first injection of
 13 liquids, gases, or other matter com-
 14 mences after December 31, 1990, and

15 “(II) in the case of a qualified
 16 nontertiary recovery method, the im-
 17 plementation of the method begins
 18 after December 31, 1998.”

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years ending after De-
 21 cember 31, 1998.

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