

107TH CONGRESS  
1ST SESSION

# H. R. 805

To amend the Internal Revenue Code of 1986 to enhance domestic oil and gas production.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2001

Mr. THORNBERRY (for himself, Mr. SKEEN, Mr. SMITH of Texas, Mr. WATTS of Oklahoma, Mr. SESSIONS, Mr. STENHOLM, Mr. WATKINS, Mr. BONILLA, Mr. LUCAS of Oklahoma, Mr. MORAN of Kansas, and Mr. COMBEST) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to enhance domestic oil and gas production.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Independent Energy Production Act of 2001”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

#### TITLE I—MARGINAL WELL PRESERVATION

Sec. 101. Short title; purpose.

Sec. 102. Tax credit for marginal domestic oil and natural gas well production.

Sec. 103. Election to expense geological and geophysical expenditures and delay rental payments.

#### TITLE II—INDEPENDENT OIL AND GAS PRODUCERS

Sec. 201. 5-year net operating loss carryback for losses attributable to operating mineral interests of independent oil and gas producers.

Sec. 202. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.

Sec. 203. Determination of small refiner exception to oil depletion deduction.

#### TITLE III—DYED DIESEL FUEL AND KEROSENE OFFERED FOR NONTAXABLE PURPOSES

Sec. 301. Repeal of requirement of certain approved terminals to offer dyed diesel fuel and kerosene for nontaxable purposes.

## **TITLE I—MARGINAL WELL PRESERVATION**

### **SEC. 101. SHORT TITLE; PURPOSE.**

(a) SHORT TITLE.—This subtitle may be cited as the “Marginal Well Preservation Act of 2001”.

(b) PURPOSE.—The purpose of section 102 is to prevent the abandonment of marginal oil and gas wells responsible for half of the domestic production of oil and gas in the United States and of section 103 is to recognize that geological and geophysical expenditures and delay rentals are ordinary and necessary business expenses that should be deducted in the year the expense is incurred.

### **SEC. 102. TAX CREDIT FOR MARGINAL DOMESTIC OIL AND NATURAL GAS WELL PRODUCTION.**

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business credits) is amended by adding at the end the following new section:

1 **“SEC. 45E. CREDIT FOR PRODUCING OIL AND GAS FROM**  
 2 **MARGINAL WELLS.**

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

6 “(1) the credit amount, and

7 “(2) the qualified crude oil production and the  
 8 qualified natural gas production which is attrib-  
 9 utable to the taxpayer.

10 “(b) CREDIT AMOUNT.—For purposes of this  
 11 section—

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

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

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

17 “(2) REDUCTION AS OIL AND GAS PRICES IN-  
 18 CREASE.—

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

24 “(i) the excess (if any) of the applica-  
 25 ble reference price over \$15 (\$1.67 for  
 26 qualified natural gas production), bears to

1 “(ii) \$3 (\$0.33 for qualified natural  
2 gas production).

3 The applicable reference price for a taxable  
4 year is the reference price for the calendar year  
5 preceding the calendar year in which the tax-  
6 able year begins.

7 “(B) INFLATION ADJUSTMENT.—In the  
8 case of any taxable year beginning in a calendar  
9 year after 2001, each of the dollar amounts  
10 contained in subparagraph (A) shall be in-  
11 creased to an amount equal to such dollar  
12 amount multiplied by the inflation adjustment  
13 factor for such calendar year (determined under  
14 section 43(b)(3)(B) by substituting ‘2001’ for  
15 ‘1990’).

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

19 “(i) in the case of qualified crude oil  
20 production, the reference price determined  
21 under section 29(d)(2)(C), and

22 “(ii) in the case of qualified natural  
23 gas production, the Secretary’s estimate of  
24 the annual average wellhead price per

1                   1,000 cubic feet for all domestic natural  
2                   gas.

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

5                   “(1) IN GENERAL.—The terms ‘qualified crude  
6           oil production’ and ‘qualified natural gas production’  
7           mean domestic crude oil or natural gas which is pro-  
8           duced from a marginal well.

9                   “(2) LIMITATION ON AMOUNT OF PRODUCTION  
10 WHICH MAY QUALIFY.—

11                   “(A) IN GENERAL.—Crude oil or natural  
12           gas produced during any taxable year from any  
13           well shall not be treated as qualified crude oil  
14           production or qualified natural gas production  
15           to the extent production from the well during  
16           the taxable year exceeds 1,095 barrels or barrel  
17           equivalents.

18                   “(B) PROPORTIONATE REDUCTIONS.—

19                   “(i) SHORT TAXABLE YEARS.—In the  
20           case of a short taxable year, the limitations  
21           under this paragraph shall be proportion-  
22           ately reduced to reflect the ratio which the  
23           number of days in such taxable year bears  
24           to 365.

1 “(ii) WELLS NOT IN PRODUCTION EN-  
 2 TIRE YEAR.—In the case of a well which is  
 3 not capable of production during each day  
 4 of a taxable year, the limitations under  
 5 this paragraph applicable to the well shall  
 6 be proportionately reduced to reflect the  
 7 ratio which the number of days of produc-  
 8 tion bears to the total number of days in  
 9 the taxable year.

10 “(3) DEFINITIONS.—

11 “(A) MARGINAL WELL.—The term ‘mar-  
 12 ginal well’ means a domestic well—

13 “(i) the production from which during  
 14 the taxable year is treated as marginal  
 15 production under section 613A(c)(6), or

16 “(ii) which, during the taxable year—

17 “(I) has average daily production  
 18 of not more than 25 barrel equiva-  
 19 lents, and

20 “(II) produces water at a rate  
 21 not less than 95 percent of total well  
 22 effluent.

23 “(B) CRUDE OIL, ETC.—The terms ‘crude  
 24 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have

1 the meanings given such terms by section  
2 613A(e).

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

7 “(d) OTHER RULES.—

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

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

23 “(3) PRODUCTION FROM NONCONVENTIONAL  
24 SOURCES EXCLUDED.—In the case of production  
25 from a marginal well which is eligible for the credit

1       allowed under section 29 for the taxable year, no  
 2       credit shall be allowable under this section unless  
 3       the taxpayer elects not to claim credit under section  
 4       29 with respect to the well.”.

5       (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
 6       tion 38(b) of such Code is amended by striking “plus”  
 7       at the end of paragraph (12), by striking the period at  
 8       the end of paragraph (13) and inserting”, plus”, and by  
 9       adding at the end of the following new paragraph:

10               “(14) the marginal oil and gas well production  
 11       credit determined under section 45E(a).”.

12       (c) CREDIT ALLOWED AGAINST REGULAR AND MIN-  
 13       IMUM TAX.—

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

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

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

23                       “(i) this section and section 39 shall  
 24       be applied separately with respect to the  
 25       credit, and



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

3 “(I) subparagraphs (A) and (B)  
4 thereof shall not apply, and

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

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

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

20 (d) CARRYBACK.—Subsection (a) of section 39 of  
21 such Code (relating to carryback and carryforward of un-  
22 used credits generally) is amended by adding at the end  
23 the following new paragraph:

1           “(3) 10-YEAR CARRYBACK FOR MARGINAL OIL  
2       AND GAS WELL PRODUCTION CREDIT.—In the case  
3       of the marginal oil and gas well production credit—

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

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

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

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

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

17       (e) COORDINATION WITH SECTION 29.—Section  
18   29(a) of such Code is amended by striking “There” and  
19   inserting “At the election of the taxpayer, there.”

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

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

1 (g) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to production in taxable years be-  
3 ginning after December 31, 2000.

4 **SEC. 103. ELECTION TO EXPENSE GEOLOGICAL AND GEO-**  
5 **PHYSICAL EXPENDITURES AND DELAY RENT-**  
6 **AL PAYMENTS.**

7 (a) GEOLOGICAL AND GEOPHYSICAL EXPENDITURES  
8 FOR OIL AND GAS WELLS.—

9 (1) IN GENERAL.—Section 263 of the Internal  
10 Revenue Code of 1986 (relating to capital expendi-  
11 tures) is amended by adding at the end the following  
12 new subsection:

13 “(j) GEOLOGICAL AND GEOPHYSICAL EXPENDI-  
14 TURES FOR OIL AND GAS WELLS.—Notwithstanding sub-  
15 section (a), a taxpayer may elect to treat geological and  
16 geophysical expenses incurred in connection with the ex-  
17 ploration for, or development of, oil or gas as expenses  
18 which are not chargeable to capital account. Any expenses  
19 so treated shall be allowed as a deduction in the taxable  
20 year in which paid or incurred.”.

21 (2) CONFORMING AMENDMENT.—Section  
22 263A(c)(3) of such Code is amended by inserting  
23 “263(j),” after “263(i),”.

24 (3) EFFECTIVE DATE.—

1 (A) IN GENERAL.—The amendments made  
2 by this subsection shall apply to expenses paid  
3 or incurred after the date of the enactment of  
4 this Act.

5 (B) TRANSITION RULE.—In the case of  
6 any expenses described in section 263(j) of the  
7 Internal Revenue Code of 1986, as added by  
8 this subsection, which were paid or incurred on  
9 or before the date of the enactment of this Act,  
10 the taxpayer may elect, at such time and in  
11 such manner as the Secretary of the Treasury  
12 may prescribe, to amortize the suspended por-  
13 tion of such expenses over the 36-month period  
14 beginning with the month in which the date of  
15 the enactment of this Act occurs. For purposes  
16 of this subparagraph, the suspended portion of  
17 any expense is that portion of such expense  
18 which, as of the first day of the 36-month pe-  
19 riod, has not been included in the cost of a  
20 property or otherwise deducted.

21 (b) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL  
22 AND GAS WELLS.—

23 (1) IN GENERAL.—Section 263 of such Code  
24 (relating to capital expenditures), as amended by

1 subsection (a)(1), is amended by adding at the end  
2 the following new subsection:

3 “(k) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL  
4 AND GAS WELLS.—

5 “(1) IN GENERAL.—Notwithstanding subsection  
6 (a), a taxpayer may elect to treat delay rental pay-  
7 ments incurred in connection with the development  
8 of oil or gas within the United States (as defined in  
9 section 638) as payments which are not chargeable  
10 to capital account. Any payments so treated shall be  
11 allowed as a deduction in the taxable year in which  
12 paid or incurred.

13 “(2) DELAY RENTAL PAYMENTS.—For purposes  
14 of paragraph (1), the term ‘delay rental payment’  
15 means an amount paid for the privilege of deferring  
16 the drilling of an oil or gas well under an oil or gas  
17 lease.”.

18 (2) CONFORMING AMENDMENT.—Section  
19 263A(c)(3) of such Code, as amended by subsection  
20 (a)(2), is amended by inserting “263(k),” after  
21 “263(j),”.

22 (3) EFFECTIVE DATE.—

23 (A) IN GENERAL.—The amendments made  
24 by this subsection shall apply to payments made

1 or incurred after the date of the enactment of  
2 this Act.

3 (B) TRANSITION RULE.—In the case of  
4 any payments described in section 263(k) of the  
5 Internal Revenue Code of 1986, as added by  
6 this subsection, which were made or incurred on  
7 or before the date of the enactment of this Act,  
8 the taxpayer may elect, at such time and in  
9 such manner as the Secretary of the Treasury  
10 may prescribe, to amortize the suspended por-  
11 tion of such payments over the 36-month period  
12 beginning with the month in which the date of  
13 the enactment of this Act occurs. For purposes  
14 of this subparagraph, the suspended portion of  
15 any payment is that portion of such payment  
16 which, as of the first day of the 36-month pe-  
17 riod, has not been included in the cost of a  
18 property or otherwise deducted.

**TITLE II—INDEPENDENT OIL  
AND GAS PRODUCERS**

**SEC. 201. 5-YEAR NET OPERATING LOSS CARRYBACK FOR  
LOSSES ATTRIBUTABLE TO OPERATING MIN-  
ERAL INTERESTS OF INDEPENDENT OIL AND  
GAS PRODUCERS.**

(a) IN GENERAL.—Paragraph (1) of section 172(b) of the Internal Revenue Code of 1986 (relating to years to which loss may be carried) is amended by adding at the end the following new subparagraph:

“(H) LOSSES ON OPERATING MINERAL INTERESTS OF INDEPENDENT OIL AND GAS PRODUCERS.—In the case of a taxpayer—

“(i) which has an eligible oil and gas loss (as defined in subsection (j)) for a taxable year, and

“(ii) which is not an integrated oil company (as defined in section 291(b)(4)), such eligible oil and gas loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.”.

(b) ELIGIBLE OIL AND GAS LOSS.—Section 172 of such Code is amended by redesignating subsection (j) as

1 subsection (k) and by inserting after subsection (i) the fol-  
 2 lowing new subsection:

3 “(j) ELIGIBLE OIL AND GAS LOSS.—For purposes of  
 4 this section—

5 “(1) IN GENERAL.—The term ‘eligible oil and  
 6 gas loss’ means the lesser of—

7 “(A) the amount which would be the net  
 8 operating loss for the taxable year if only in-  
 9 come and deductions attributable to operating  
 10 mineral interests (as defined in section 614(d))  
 11 in oil and gas wells are taken into account, or

12 “(B) the amount of the net operating loss  
 13 for such taxable year.

14 “(2) COORDINATION WITH SUBSECTION  
 15 (b)(2).—For purposes of applying subsection (b)(2),  
 16 an eligible oil and gas loss for any taxable year shall  
 17 be treated in a manner similar to the manner in  
 18 which a specified liability loss is treated.

19 “(3) ELECTION.—Any taxpayer entitled to a 5-  
 20 year carryback under subsection (b)(1)(H) from any  
 21 loss year may elect to have the carryback period  
 22 with respect to such loss year determined without re-  
 23 gard to subsection (b)(1)(H).”.



1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to net operating losses for taxable  
 3 years beginning after December 31, 2000.

4 **SEC. 202. TEMPORARY SUSPENSION OF LIMITATION BASED**  
 5 **ON 65 PERCENT OF TAXABLE INCOME AND**  
 6 **EXTENSION OF SUSPENSION OF TAXABLE IN-**  
 7 **COME LIMIT WITH RESPECT TO MARGINAL**  
 8 **PRODUCTION.**

9 (a) LIMITATION BASED ON 65 PERCENT OF TAX-  
 10 ABLE INCOME.—Subsection (d) of section 613A of the In-  
 11 ternal Revenue Code of 1986 (relating to limitation on  
 12 percentage depletion in case of oil and gas wells) is amend-  
 13 ed by adding at the end the following new paragraph:

14 “(6) TEMPORARY SUSPENSION OF TAXABLE IN-  
 15 COME LIMIT.—Paragraph (1) shall not apply to tax-  
 16 able years beginning after December 31, 2000, and  
 17 before January 1, 2007, including with respect to  
 18 amounts carried under the second sentence of para-  
 19 graph (1) to such taxable years.”.

20 (b) EXTENSION OF SUSPENSION OF TAXABLE IN-  
 21 COME LIMIT WITH RESPECT TO MARGINAL PRODUC-  
 22 TION.—Subparagraph (H) of section 613A(c)(6) of such  
 23 Code (relating to temporary suspension of taxable income  
 24 limit with respect to marginal production) is amended by  
 25 striking “2002” and inserting “2007”.

1 (c) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to taxable years beginning after  
3 December 31, 2000.

4 **SEC. 203. DETERMINATION OF SMALL REFINER EXCEPTION**  
5 **TO OIL DEPLETION DEDUCTION.**

6 (a) IN GENERAL.—Paragraph (4) of section 613A(d)  
7 of the Internal Revenue Code (relating to certain refiners  
8 excluded) is amended to read as follows:

9 “(4) CERTAIN REFINERS EXCLUDED.—If the  
10 taxpayer or a related person engages in the refining  
11 of crude oil, subsection (c) shall not apply to the  
12 taxpayer for a taxable year if the average daily refin-  
13 ery runs of the taxpayer and the related person for  
14 the taxable year exceed 50,000 barrels. For purposes  
15 of this paragraph, the average daily refinery runs for  
16 any taxable year shall be determined by dividing the  
17 aggregate refinery runs for the taxable year by the  
18 number of days in the taxable year.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2000.

1 **TITLE III—DYED DIESEL FUEL**  
2 **AND KEROSENE OFFERED**  
3 **FOR NONTAXABLE PURPOSES**

4 **SEC. 301. REPEAL OF REQUIREMENT OF CERTAIN AP-**  
5 **PROVED TERMINALS TO OFFER DYED DIESEL**  
6 **FUEL AND KEROSENE FOR NONTAXABLE**  
7 **PURPOSES.**

8 Section 4101 of the Internal Revenue Code of 1986  
9 (relating to certain approved terminals of registered per-  
10 sons required to offer dyed diesel fuel and kerosene for  
11 nontaxable purposes) is amended by striking subsection  
12 (e).

○