

109TH CONGRESS
1ST SESSION

H. R. 4263

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil, to establish the Consumer Energy Assistance Trust Fund, and to provide for a rebate to energy consumers.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2005

Mr. MARKEY (for himself, Mr. EMANUEL, Mr. SANDERS, Mr. NADLER, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil, to establish the Consumer Energy Assistance Trust Fund, and to provide for a rebate to energy consumers.

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 and
5 Consumer Assistance Act of 2005”.

1 **SEC. 2. WINDFALL PROFITS TAX.**

2 (a) IN GENERAL.—Subtitle E of the Internal Rev-
 3 enue Code of 1986 (relating to alcohol, tobacco, and cer-
 4 tain other excise taxes) is amended by adding at the end
 5 thereof the following new chapter:

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

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; removal price; adjusted base price; qualified invest-
 ment.

“Sec. 5898. Special rules and definitions.

8 **“SEC. 5896. IMPOSITION OF TAX.**

9 “(a) IN GENERAL.—In addition to any other tax im-
 10 posed under this title, there is hereby imposed on any pro-
 11 ducer of crude oil an excise tax equal to the excess of—

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

16 “(2) the amount of qualified investment by such
 17 producer during such taxable year.

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

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

4 **“SEC. 5897. WINDFALL PROFIT; REMOVAL PRICE; AD-**
 5 **JUSTED BASE PRICE; QUALIFIED INVEST-**
 6 **MENT.**

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

11 “(b) REMOVAL PRICE.—For purposes of this chap-
 12 ter—

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

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

22 “(3) OIL REMOVED FROM PROPERTY BEFORE
 23 SALE.—If crude oil is removed from the property be-
 24 fore it is sold, the removal price shall be the con-

1 structive sales price for purposes of determining
2 gross income from the property under section 613.

3 “(4) REFINING BEGUN ON PROPERTY.—If the
4 manufacture or conversion of crude oil into refined
5 products begins before such oil is removed from the
6 property—

7 “(A) such oil shall be treated as removed
8 on the day such manufacture or conversion be-
9 gins, and

10 “(B) the removal price shall be the con-
11 structive sales price for purposes of determining
12 gross income from the property under section
13 613.

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

16 “(c) ADJUSTED BASE PRICE DEFINED.—

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

21 “(A) such base price, multiplied by

22 “(B) the inflation adjustment for the cal-
23 endar year in which the taxable crude oil is re-
24 moved from the property.

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

3 “(2) INFLATION ADJUSTMENT.—

4 “(A) IN GENERAL.—For purposes of para-
5 graph (1), the inflation adjustment for any cal-
6 endar year after 2006 is the percentage by
7 which—

8 “(i) the implicit price deflator for the
9 gross national product for the preceding
10 calendar year, exceeds

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

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

16 “(d) QUALIFIED INVESTMENT.—For purposes of this
17 chapter—

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

21 “(A) section 263(c) costs,

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

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

5 “(D) any facility for the production of al-
6 cohol used as a fuel (within the meaning of sec-
7 tion 40) or biodiesel or agri-biodiesel used as a
8 fuel (within the meaning of section 40A).

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

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

18 “(a) WITHHOLDING AND DEPOSIT OF TAX.—The
19 Secretary shall provide such rules as are necessary for the
20 withholding and deposit of the tax imposed under section
21 5896 on any taxable crude oil.

22 “(b) RECORDS AND INFORMATION.—Each taxpayer
23 liable for tax under section 5896 shall keep such records,
24 make such returns, and furnish such information (to the
25 Secretary and to other persons having an interest in the

1 taxable crude oil) with respect to such oil as the Secretary
 2 may by regulations prescribe.

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

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

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

10 “(2) CRUDE OIL.—

11 “(A) IN GENERAL.—The term ‘crude oil’
 12 includes crude oil condensates and natural gas-
 13 oline.

14 “(B) EXCLUSION OF NEWLY DISCOVERED
 15 OIL.—Such term shall not include any oil pro-
 16 duced from a well drilled after the date of the
 17 enactment of the ‘Windfall Profits and Con-
 18 sumer Assistance Act of 2005’, except with re-
 19 spect to any oil produced from a well drilled
 20 after such date on any proven oil or gas prop-
 21 erty (within the meaning of section
 22 613A(c)(9)(A)).

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

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

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

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

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

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL”.

14 (c) 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. CONSUMER ENERGY ASSISTANCE TRUST FUND.**

5 (a) IN GENERAL.—Subchapter A of chapter 98 of the
6 Internal Revenue Code of 1986 (relating to establishment
7 of trust funds) is amended by adding at the end the fol-
8 lowing new section:

9 **“SEC. 9511. CONSUMER ENERGY ASSISTANCE TRUST FUND.**

10 “(a) CREATION OF TRUST FUND.—There is estab-
11 lished in the Treasury of the United States a trust fund
12 to be known as the ‘Consumer Energy Assistance Trust
13 Fund’, consisting of such amounts as may be appropriated
14 or credited to such fund as provided in this section or sec-
15 tion 9602(b).

16 “(b) TRANSFERS TO TRUST FUND.—There are here-
17 by appropriated to the Consumer Energy Assistance Trust
18 Fund amounts equivalent to the taxes received in the
19 Treasury under chapter 56.

20 “(c) EXPENDITURES.—Amounts in the Consumer
21 Energy Assistance Trust Fund shall be available for mak-
22 ing expenditures to carry out the Low-Income Home En-
23 ergy Assistance Act of 1981 (as in effect on the date of
24 the enactment of this section).”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for subchapter A of chapter 98 of such Code is amended
 3 by adding at the end the following new item:

“Sec. 9511. Consumer Energy Assistance Trust Fund.”.

4 **SEC. 4. 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 abatelements, 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 (reduced by the amount appropriated to the
17 Consumer Energy Assistance Trust Fund under section
18 9511) resulting from the tax imposed by chapter 56 for
19 the calendar year preceding the taxable year.

20 “(d) DATE PAYMENT DEEMED MADE.—

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

1 “(2) REMITTANCE OF PAYMENT.—The Sec-
 2 retary shall remit to each taxpayer the payment de-
 3 scribed in paragraph (1) not later than the date
 4 which is 30 days after the date specified in para-
 5 graph (1).

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

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

13 “(2) any estate or trust, or

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

15 (b) CONFORMING AMENDMENT.—Section 1324(b)(2)
 16 of title 31, United States Code, is amended by inserting
 17 before the period “, or enacted by the Windfall Profits
 18 and Consumer Assistance Act of 2005”.

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

“Sec. 6430. Energy consumer rebate.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

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