

109TH CONGRESS
1ST SESSION

H. R. 4370

To provide incentives to the auto industry to accelerate efforts to develop more energy-efficient vehicles to lessen dependence on oil.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2005

Mr. INSLEE introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 provide incentives to the auto industry to accelerate efforts to develop more energy-efficient vehicles to lessen dependence on oil.

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 “Health Care for Hy-

5 brids Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The United States imports over half the oil
2 it consumes.

3 (2) According to present trends, the United
4 States' reliance on foreign oil will increase to 68 per-
5 cent of total consumption by 2025.

6 (3) Having only 3 percent of the world's known
7 oil reserves, the health of the United States economy
8 is dependent on world oil prices.

9 (4) World oil prices are overwhelmingly dictated
10 by countries other than the United States, thus en-
11 dangering our economic and national security.

12 (5) A major portion of the world's oil supply is
13 controlled by unstable governments and countries
14 that are known to finance, harbor, or otherwise sup-
15 port terrorists and terrorist activities.

16 (6) American automakers have lagged behind
17 their foreign competitors in producing hybrid and
18 other energy-efficient automobiles.

19 (7) Legacy health care costs associated with re-
20 tiree workers are an increasing burden on the global
21 competitiveness of American industries.

22 (8) Innovative uses of new technology in auto-
23 mobiles in the United States will help retain Amer-
24 ican jobs, support health care obligations for retiring
25 workers in the automotive sector, decrease America's

1 dependence on foreign oil, and address pressing envi-
2 ronmental concerns.

3 **TITLE I—PROGRAM**

4 **SEC. 101. COORDINATING TASK FORCE.**

5 Not later than 6 months after the date of enactment
6 of this Act, the Secretary of Energy, the Secretary of
7 Health and Human Services, the Secretary of Transpor-
8 tation, and the Secretary of the Treasury shall establish,
9 and appoint an equal number of representatives to, a task
10 force (referred to in this Act as the “task force”) to ad-
11 minister the program established under this Act.

12 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this Act, the task force established
15 under section 101 shall establish a program to reimburse
16 eligible domestic automobile manufacturers for the costs
17 incurred in providing health benefits to their retired em-
18 ployees.

19 (b) CONSULTATION.—In establishing the program
20 under subsection (a), the task force shall consult with rep-
21 resentatives from eligible domestic automobile manufac-
22 turers, unions representing employees of such manufactur-
23 ers, and consumer and environmental groups.

24 (c) ELIGIBLE DOMESTIC AUTOMOBILE MANUFAC-
25 Turer.—To be eligible to receive reimbursement under

1 the program established under subsection (a), a domestic
2 automobile manufacturer shall—

3 (1) submit an application to the task force at
4 such time, in such manner, and containing such in-
5 formation as the task force shall require;

6 (2) certify that such manufacturer is providing
7 full health care coverage to all of its employees;

8 (3) provide an assurance that the manufacturer
9 will invest an amount equal to or more than 50 per-
10 cent of the amount of health savings derived by the
11 manufacturer as a result of its retiree health care
12 costs being covered under the program under this
13 section, in—

14 (A) the domestic manufacture and com-
15 mercialization of petroleum fuel reduction tech-
16 nologies, including alternative or flexible fuel
17 vehicles, hybrids, and other state-of-the-art fuel
18 saving technologies;

19 (B) the retraining of workers and retooling
20 of assembly lines for such domestic manufac-
21 ture and commercialization;

22 (C) research and development, design,
23 commercialization, and other costs related to
24 the diversifying of domestic production of auto-

1 mobiles through the offering of high perform-
2 ance fuel efficient vehicles; and

3 (D) assisting domestic automobile compo-
4 nent suppliers to retool their domestic manufac-
5 turing plants to produce components for petro-
6 leum fuel reduction technologies, including al-
7 ternative or flexible fuel vehicles, hybrid, ad-
8 vanced diesel, or other state-of-the-art fuel sav-
9 ing technologies; and

10 (4) provide additional assurances and informa-
11 tion as the task force may require, including infor-
12 mation needed by the task force to audit the manu-
13 facturer's compliance with the requirements of the
14 program.

15 (d) LIMITATION.—The total amount of cost that may
16 be reimbursed each year under the program under this
17 section with respect to any single domestic automobile
18 manufacturer shall not exceed an amount equal to 10 per-
19 cent of the retiree health care costs of that manufacturer
20 for that year.

21 **SEC. 103. REPORTING.**

22 Not later than 6 months after the date of enactment
23 of this Act, and every 6 months thereafter, the task force
24 shall submit to Congress a report on any reimbursements
25 paid under the program under this Act and the resulting

1 changes in the manufacture and commercialization of fuel
2 saving technologies implemented by auto manufacturers as
3 a result of such reimbursements. Not later than 1 year
4 after the date of enactment of this Act, the task force shall
5 submit a report to Congress on the effectiveness of current
6 consumer incentives available for the purchase of hybrid
7 vehicles in encouraging the purchase of such vehicles and
8 whether these incentives should be expanded.

9 **SEC. 104. ADDITIONAL ELIGIBILITY REQUIREMENT.**

10 To be eligible to receive financial assistance under
11 this title, a manufacturer shall provide assurances to the
12 task force that fuel savings achieved with respect to the
13 average adjusted fuel economy will not result in decreases
14 with respect to fuel economy elsewhere in the domestic
15 fleet. The task force shall determine compliance with such
16 assurances using accepted measurements of fuel savings.

17 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as may be necessary in each fiscal year to carry out this
20 Act.

21 **SEC. 106. TERMINATION OF PROGRAM.**

22 The program established under section 102 shall ter-
23minate on December 31, 2015.

TITLE II—OFFSETS

SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

1 “(II) the taxpayer has a substan-
2 tial nontax purpose for entering into
3 such transaction and the transaction
4 is a reasonable means of accom-
5 plishing such purpose.

6 In applying subclause (II), a purpose of
7 achieving a financial accounting benefit
8 shall not be taken into account in deter-
9 mining whether a transaction has a sub-
10 stantial nontax purpose if the origin of
11 such financial accounting benefit is a re-
12 duction of income tax

13 “(ii) SPECIAL RULE WHERE TAX-
14 PAYER RELIES ON PROFIT POTENTIAL.—A
15 transaction shall not be treated as having
16 economic substance by reason of having a
17 potential for profit unless—

18 “(I) the present value of the rea-
19 sonably expected pre-tax profit from
20 the transaction is substantial in rela-
21 tion to the present value of the ex-
22 pected net tax benefits that would be
23 allowed if the transaction were re-
24 spected, and

1 “(II) the reasonably expected
2 pre-tax profit from the transaction ex-
3 ceeds a risk-free rate of return.

4 “(C) TREATMENT OF FEES AND FOREIGN
5 TAXES.—Fees and other transaction expenses
6 and foreign taxes shall be taken into account as
7 expenses in determining pre-tax profit under
8 subparagraph (B)(ii).

9 “(2) SPECIAL RULES FOR TRANSACTION WITH
10 TAX-INDIFFERENT PARTIES.—

11 “(A) SPECIAL RULES FOR FINANCING
12 TRANSACTIONS.—The form of a transaction
13 which is in substance the borrowing of money
14 or the acquisition of financial capital directly or
15 indirectly from a tax-indifferent party shall not
16 be respected if the present value of the deduc-
17 tions to be claimed with respect to the trans-
18 action is substantially in excess of the present
19 value of the anticipated economic returns of the
20 person lending the money or providing the fi-
21 nancial capital. A public offering shall be treat-
22 ed as a borrowing, or an acquisition of financial
23 capital, from a tax-indifferent party if it is rea-
24 sonably expected that at least 50 percent of the

1 offering will be placed with tax-indifferent par-
2 ties.

3 “(B) ARTIFICIAL INCOME SHIFTING AND
4 BASIS ADJUSTMENTS.—The form of a trans-
5 action with a tax-indifferent party shall not be
6 respected if—

7 “(i) it results in an allocation of in-
8 come or gain to the tax-indifferent party in
9 excess of such party’s economic income or
10 gain, or

11 “(ii) it results in a basis adjustment
12 or shifting of basis on account of over-
13 stating the income or gain of the tax-indif-
14 ferent party.

15 “(3) DEFINITIONS AND SPECIAL RULES.—For
16 purposes of this subsection—

17 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
18 The term ‘economic substance doctrine’ means
19 the common law doctrine under which tax bene-
20 fits under subtitle A with respect to a trans-
21 action are not allowable if the transaction does
22 not have economic substance or lacks a business
23 purpose.

24 “(B) TAX-INDIFFERENT PARTY.—The
25 term ‘tax-indifferent party’ means any person

1 or entity not subject to tax imposed by subtitle

2 A. A person shall be treated as a tax-indifferent
3 party with respect to a transaction if the items
4 taken into account with respect to the trans-
5 action have no substantial impact on such per-
6 son's liability under subtitle A.

7 “(C) EXCEPTION FOR PERSONAL TRANS-
8 ACTIONS OF INDIVIDUALS.—In the case of an
9 individual, this subsection shall apply only to
10 transactions entered into in connection with a
11 trade or business or an activity engaged in for
12 the production of income.

13 “(D) TREATMENT OF LESSORS.—In apply-
14 ing paragraph (1)(B)(ii) to the lessor of tan-
15 gible property subject to a lease—

16 “(i) the expected net tax benefits with
17 respect to the leased property shall not in-
18 clude the benefits of—

19 “(I) depreciation,

20 “(II) any tax credit, or

21 “(III) any other deduction as
22 provided in guidance by the Secretary,
23 and

24 “(ii) subclause (II) of paragraph
25 (1)(B)(ii) shall be disregarded in deter-

1 mining whether any of such benefits are al-
 2 lowable.

3 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
 4 FECTED.—Except as specifically provided in this
 5 subsection, the provisions of this subsection shall not
 6 be construed as altering or supplanting any other
 7 rule of law, and the requirements of this subsection
 8 shall be construed as being in addition to any such
 9 other rule of law.

10 “(5) REGULATIONS.—The Secretary shall pre-
 11 scribe such regulations as may be necessary or ap-
 12 propriate to carry out the purposes of this sub-
 13 section. Such regulations may include exemptions
 14 from the application of this subsection.”.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to transactions entered into after
 17 the date of the enactment of this Act.

18 **SEC. 202. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 19 **UTABLE TO TRANSACTIONS LACKING ECO-**
 20 **NOMIC SUBSTANCE, ETC.**

21 (a) IN GENERAL.—Subchapter A of chapter 68 of the
 22 Internal Revenue Code of 1986 is amended by inserting
 23 after section 6662A the following new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 2 **UTABLE TO TRANSACTIONS LACKING ECO-**
 3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
 5 noneconomic substance transaction understatement for
 6 any taxable year, there shall be added to the tax an
 7 amount equal to 40 percent of the amount of such under-
 8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED
 10 TRANSACTIONS.—Subsection (a) shall be applied by sub-
 11 stituting ‘20 percent’ for ‘40 percent’ with respect to the
 12 portion of any noneconomic substance transaction under-
 13 statement with respect to which the relevant facts affect-
 14 ing the tax treatment of the item are adequately disclosed
 15 in the return or a statement attached to the return.

16 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
 17 DERSTATEMENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘noneconomic
 19 substance transaction understatement’ means any
 20 amount which would be an understatement under
 21 section 6662A(b)(1) if section 6662A were applied
 22 by taking into account items attributable to non-
 23 economic substance transactions rather than items
 24 to which section 6662A would apply without regard
 25 to this paragraph.

1 “(2) NONECONOMIC SUBSTANCE TRANS-
 2 ACTION.—The term ‘noneconomic substance trans-
 3 action’ means any transaction if—

4 “(A) there is a lack of economic substance
 5 (within the meaning of section 7701(o)(1)) for
 6 the transaction giving rise to the claimed ben-
 7 efit or the transaction was not respected under
 8 section 7701(o)(2), or

9 “(B) the transaction fails to meet the re-
 10 quirements of any similar rule of law.

11 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
 12 ALTY.—

13 “(1) IN GENERAL.—If the 1st letter of pro-
 14 posed deficiency which allows the taxpayer an oppor-
 15 tunity for administrative review in the Internal Rev-
 16 enue Service Office of Appeals has been sent with
 17 respect to a penalty to which this section applies,
 18 only the Commissioner of Internal Revenue may
 19 compromise all or any portion of such penalty.

20 “(2) APPLICABLE RULES.—The rules of para-
 21 graphs (2) and (3) of section 6707A(d) shall apply
 22 for purposes of paragraph (1).

23 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
 24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-
 2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

4 “(1) For coordination of penalty with under-
 5 statements under section 6662 and other special
 6 rules, see section 6662A(e).

7 “(2) For reporting of penalty imposed under
 8 this section to the Securities and Exchange Commis-
 9 sion, see section 6707A(e).”.

10 (b) COORDINATION WITH OTHER UNDERSTATE-
 11 MENTS AND PENALTIES.—

12 (1) The second sentence of section
 13 6662(d)(2)(A) of the Internal Revenue Code of 1986
 14 is amended by inserting “and without regard to
 15 items with respect to which a penalty is imposed by
 16 section 6662B” before the period at the end.

17 (2) Subsection (e) of section 6662A of the In-
 18 ternal Revenue Code of 1986 is amended—

19 (A) in paragraph (1), by inserting “and
 20 noneconomic substance transaction understate-
 21 ments” after “reportable transaction under-
 22 statements” both places it appears,

23 (B) in paragraph (2)(A), by inserting “and
 24 a noneconomic substance transaction under-

1 statement” after “reportable transaction under-
 2 statement”,

3 (C) in paragraph (2)(B), by inserting
 4 “6662B or” before “6663”,

5 (D) in paragraph (2)(C)(i), by inserting
 6 “or section 6662B” before the period at the
 7 end,

8 (E) in paragraph (2)(C)(ii), by inserting
 9 “and section 6662B” after “This section”,

10 (F) in paragraph (3), by inserting “or non-
 11 economic substance transaction understate-
 12 ment” after “reportable transaction understate-
 13 ment”, and

14 (G) by adding at the end the following new
 15 paragraph:

16 “(3) NONECONOMIC SUBSTANCE TRANSACTION
 17 UNDERSTATEMENT.—For purposes of this sub-
 18 section, the term ‘noneconomic substance trans-
 19 action understatement’ has the meaning given such
 20 term by section 6662B(c).”.

21 (3) Subsection (e) of section 6707A of the In-
 22 ternal Revenue Code of 1986 is amended—

23 (A) by striking “or” at the end of subpara-
 24 graph (B), and

1 (B) by striking subparagraph (C) and in-
 2 serting the following new subparagraphs:

3 “(C) is required to pay a penalty under
 4 section 6662B with respect to any noneconomic
 5 substance transaction, or

6 “(D) is required to pay a penalty under
 7 section 6662(h) with respect to any transaction
 8 and would (but for section 6662A(e)(2)(C))
 9 have been subject to penalty under section
 10 6662A at a rate prescribed under section
 11 6662A(c) or under section 6662B,”.

12 (c) CLERICAL AMENDMENT.—The table of sections
 13 for part II of subchapter A of chapter 68 of the Internal
 14 Revenue Code of 1986 is amended by inserting after the
 15 item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking
 economic substance, etc.”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to transactions entered into after
 18 the date of the enactment of this Act.

19 **SEC. 203. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 20 **DERPAYMENTS ATTRIBUTABLE TO NON-**
 21 **ECONOMIC SUBSTANCE TRANSACTIONS.**

22 (a) IN GENERAL.—Section 163(m) of the Internal
 23 Revenue Code of 1986 (relating to interest on unpaid

1 taxes attributable to nondisclosed reportable transactions)
2 is amended—

3 (1) by striking “attributable” and all that fol-
4 lows and inserting the following:

5 “attributable to—

6 “(1) the portion of any reportable transaction
7 understatement (as defined in section 6662A(b))
8 with respect to which the requirement of section
9 6664(d)(2)(A) is not met, or

10 “(2) any noneconomic substance transaction
11 understatement (as defined in section 6662B(c)).”;
12 and

13 (2) by inserting “and noneconomic substance
14 transactions” after “transactions”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to transactions after the date of
17 the enactment of this Act in taxable years ending after
18 such date.

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