

109TH CONGRESS
2D SESSION

H. R. 5300

To restore fairness in the provision of incentives for oil and gas production,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2006

Mr. HINCHEY (for himself, Mr. HASTINGS of Florida, Mr. MARKEY, Mr. INSLEE, Mr. MORAN of Virginia, Mr. BLUMENAUER, Mr. SANDERS, Mr. McDERMOTT, Mr. STARK, Mrs. MALONEY, Mr. MCGOVERN, Mr. LARSON of Connecticut, Mr. SCHIFF, Mr. GRIJALVA, Mrs. CAPPs, Mr. OBERSTAR, Mr. RAHALL, Mrs. MCCARTHY, Mr. RANGEL, Mr. GEORGE MILLER of California, Mr. DEFazio, Mr. MEEHAN, Mr. WEXLER, Ms. DELAURO, Ms. WOOLSEY, Mr. TOWNS, Mrs. LOWEY, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Resources and Science, 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 restore fairness in the provision of incentives for oil
and gas production, 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; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Energy Fairness for America Act”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

- Sec. 1. Short title; etc.
- Sec. 2. Termination of deduction for intangible drilling and development costs.
- Sec. 3. Termination of percentage depletion allowance for oil and gas wells.
- Sec. 4. Termination of enhanced oil recovery credit.
- Sec. 5. Termination of certain provisions of the Energy Policy Act of 2005.
- Sec. 6. Termination of certain tax provisions of the Energy Policy Act of 2005.
- Sec. 7. Revaluation of LIFO inventories of large integrated oil companies.
- Sec. 8. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.
- Sec. 9. Rules relating to foreign oil and gas income.
- Sec. 10. Elimination of deferral for foreign oil and gas extraction income.

9 SEC. 2. TERMINATION OF DEDUCTION FOR INTANGIBLE 10 DRILLING AND DEVELOPMENT COSTS.

(a) IN GENERAL.—Section 263(c) is amended by adding at the end the following new sentence: “This subsection shall not apply to any taxable year beginning after the date of the enactment of this sentence.”.

(b) CONFORMING AMENDMENTS.—Paragraphs (2) and (3) of section 291(b) are each amended by striking “section 263(c), 616(a),” and inserting “section 616(a)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

1 **SEC. 3. TERMINATION OF PERCENTAGE DEPLETION AL-**
2 **LOWANCE FOR OIL AND GAS WELLS.**

3 (a) IN GENERAL.—Section 613A is amended by add-
4 ing at the end the following new subsection:

5 “(f) TERMINATION.—For purposes of any taxable
6 year beginning after the date of the enactment of this sub-
7 section, the allowance for percentage depletion shall be
8 zero.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 4. TERMINATION OF ENHANCED OIL RECOVERY CRED-**
13 **IT.**

14 (a) IN GENERAL.—Section 43 is amended by adding
15 at the end the following new subsection:

16 “(f) TERMINATION.—This section shall not apply to
17 any taxable year beginning after the date of the enactment
18 of this subsection.”.

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

22 **SEC. 5. TERMINATION OF CERTAIN PROVISIONS OF THE**
23 **ENERGY POLICY ACT OF 2005.**

24 (a) IN GENERAL.—The following provisions of the
25 Energy Policy Act of 2005 are repealed on and after the
26 date of the enactment of this Act:

1 (1) Section 342 (relating to program on oil and
2 gas royalties in-kind).

3 (2) Section 343 (relating to marginal property
4 production incentives).

5 (3) Section 344 (relating to incentives for nat-
6 ural gas production from deep wells in the shallow
7 waters of the Gulf of Mexico).

8 (4) Section 345 (relating to royalty relief for
9 deep water production).

10 (5) Section 357 (relating to comprehensive in-
11 ventory of OCS oil and natural gas resources).

12 (6) Subtitle J of title IX (relating to ultra-deep-
13 water and unconventional natural gas and other pe-
14 troleum resources).

15 (b) TERMINATION OF ALASKA OFFSHORE ROYALTY
16 SUSPENSION.—

17 (1) IN GENERAL.—Section 8(a)(3)(B) of the
18 Outer Continental Shelf Lands Act (43 U.S.C.
19 1337(a)(3)(B)) is amended by striking “and in the
20 Planning Areas offshore Alaska”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by this subsection shall take effect on and after the
23 date of the enactment of this Act.

1 **SEC. 6. TERMINATION OF CERTAIN TAX PROVISIONS OF**
2 **THE ENERGY POLICY ACT OF 2005.**

3 (a) ELECTRIC TRANSMISSION PROPERTY TREATED
4 AS 15-YEAR PROPERTY.—Section 168(e)(3)(E)(vii) is
5 amended by inserting “, and before the date of the enact-
6 ment of the Energy Fairness for America Act” after
7 “April 11, 2005”.

8 (b) TEMPORARY EXPENSING OF EQUIPMENT USED
9 IN REFINING LIQUID FUELS.—Section 179C(c)(1) is
10 amended—

11 (1) in subparagraph (B) by striking “January
12 1, 2012” and inserting “the date of the enactment
13 of the Energy Fairness for America Act”, and

14 (2) by striking “January 1, 2008” each place
15 it appears in subparagraph (F) and inserting “the
16 date of the enactment of the Energy Fairness for
17 America Act”.

18 (c) NATURAL GAS DISTRIBUTION LINES TREATED
19 AS 15-YEAR PROPERTY.—Section 168(e)(3)(E)(viii) is
20 amended by striking “January 1, 2011” and inserting
21 “the date of the enactment of the Energy Fairness for
22 America Act”.

23 (d) NATURAL GAS GATHERING LINES TREATED AS
24 7-YEAR PROPERTY.—Section 168(e)(3)(C)(iv) is amended
25 by inserting “, and before the date of the enactment of

1 the Energy Fairness for America Act” after “April 11,
2 2005”.

3 (e) DETERMINATION OF SMALL REFINER EXCEP-
4 TION TO OIL DEPLETION DEDUCTION.—Section 1328(b)
5 of the Energy Policy Act of 2005 is amended by inserting
6 “and beginning before the date of the enactment of the
7 Energy Fairness for America Act” after “this Act”.

8 (f) AMORTIZATION OF GEOLOGICAL AND GEO-
9 PHYSICAL EXPENDITURES.—Section 167(h) is amended
10 by adding at the end the following new paragraph:

11 “(5) TERMINATION.—This subsection shall not
12 apply to any taxable year beginning after the date
13 of the enactment of the Energy Fairness for Amer-
14 ica Act.”.

15 (g) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on and after the date of the
17 enactment of this Act.

18 **SEC. 7. REVALUATION OF LIFO INVENTORIES OF LARGE IN-**
19 **TEGRATED OIL COMPANIES.**

20 (a) GENERAL RULE.—Notwithstanding any other
21 provision of law, if a taxpayer is an applicable integrated
22 oil company for its last taxable year ending in calendar
23 year 2005, the taxpayer shall—

24 (1) increase, effective as of the close of such
25 taxable year, the value of each historic LIFO layer

1 of inventories of crude oil, natural gas, or any other
 2 petroleum product (within the meaning of section
 3 4611) by the layer adjustment amount, and

4 (2) decrease its cost of goods sold for such tax-
 5 able year by the aggregate amount of the increases
 6 under paragraph (1).

7 If the aggregate amount of the increases under paragraph
 8 (1) exceed the taxpayer's cost of goods sold for such tax-
 9 able year, the taxpayer's gross income for such taxable
 10 year shall be increased by the amount of such excess.

11 (b) LAYER ADJUSTMENT AMOUNT.—For purposes of
 12 this section—

13 (1) IN GENERAL.—The term “layer adjustment
 14 amount” means, with respect to any historic LIFO
 15 layer, the product of—

16 (A) \$18.75, and

17 (B) the number of barrels of crude oil (or
 18 in the case of natural gas or other petroleum
 19 products, the number of barrel-of-oil equiva-
 20 lents) represented by the layer.

21 (2) BARREL-OF-OIL EQUIVALENT.—The term
 22 “barrel-of-oil equivalent” has the meaning given
 23 such term by section 29(d)(5) of the Internal Rev-
 24 enue Code of 1986 (as in effect before its redesigna-
 25 tion by the Energy Tax Incentives Act of 2005).

1 (c) APPLICATION OF REQUIREMENT.—

2 (1) NO CHANGE IN METHOD OF ACCOUNTING.—

3 Any adjustment required by this section shall not be
4 treated as a change in method of accounting.

5 (2) UNDERPAYMENTS OF ESTIMATED TAX.—No
6 addition to the tax shall be made under section 6655
7 of the Internal Revenue Code of 1986 (relating to
8 failure by corporation to pay estimated tax) with re-
9 spect to any underpayment of an installment re-
10 quired to be paid with respect to the taxable year
11 described in subsection (a) to the extent such under-
12 payment was created or increased by this section.

13 (d) APPLICABLE INTEGRATED OIL COMPANY.—For
14 purposes of this section, the term “applicable integrated
15 oil company” means an integrated oil company (as defined
16 in section 291(b)(4) of the Internal Revenue Code of
17 1986) which has an average daily worldwide production
18 of crude oil of at least 500,000 barrels for the taxable
19 year and which had gross receipts in excess of
20 \$1,000,000,000 for its last taxable year ending during cal-
21 endar year 2005. For purposes of this subsection all per-
22 sons treated as a single employer under subsections (a)
23 and (b) of section 52 of the Internal Revenue Code of
24 1986 shall be treated as 1 person and, in the case of a

1 short taxable year, the rule under section 448(c)(3)(B) of
 2 such Code shall apply.

3 **SEC. 8. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**

4 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

5 (a) IN GENERAL.—Section 901 (relating to credit for
 6 taxes of foreign countries and of possessions of the United
 7 States) is amended by redesignating subsection (m) as
 8 subsection (n) and by inserting after subsection (l) the fol-
 9 lowing new subsection:

10 “(m) SPECIAL RULES RELATING TO DUAL CAPACITY
 11 TAXPAYERS.—

12 “(1) GENERAL RULE.—Notwithstanding any
 13 other provision of this chapter, any amount paid or
 14 accrued by a dual capacity taxpayer to a foreign
 15 country or possession of the United States for any
 16 period shall not be considered a tax—

17 “(A) if, for such period, the foreign coun-
 18 try or possession does not impose a generally
 19 applicable income tax, or

20 “(B) to the extent such amount exceeds
 21 the amount (determined in accordance with reg-
 22 ulations) which—

23 “(i) is paid by such dual capacity tax-
 24 payer pursuant to the generally applicable

1 income tax imposed by the country or pos-
2 session, or

3 “(ii) would be paid if the generally ap-
4 plicable income tax imposed by the country
5 or possession were applicable to such dual
6 capacity taxpayer.

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

11 “(2) DUAL CAPACITY TAXPAYER.—For pur-
12 poses of this subsection, the term ‘dual capacity tax-
13 payer’ means, with respect to any foreign country or
14 possession of the United States, a person who—

15 “(A) is subject to a levy of such country or
16 possession, and

17 “(B) receives (or will receive) directly or
18 indirectly a specific economic benefit (as deter-
19 mined in accordance with regulations) from
20 such country or possession.

21 “(3) GENERALLY APPLICABLE INCOME TAX.—

22 For purposes of this subsection—

23 “(A) IN GENERAL.—The term ‘generally
24 applicable income tax’ means an income tax (or
25 a series of income taxes) which is generally im-

1 posed under the laws of a foreign country or
2 possession on income derived from the conduct
3 of a trade or business within such country or
4 possession.

5 “(B) EXCEPTIONS.—Such term shall not
6 include a tax unless it has substantial applica-
7 tion, by its terms and in practice, to—

8 “(i) persons who are not dual capacity
9 taxpayers, and

10 “(ii) persons who are citizens or resi-
11 dents of the foreign country or posses-
12 sion.”

13 (b) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by
15 this section shall apply to taxes paid or accrued in
16 taxable years beginning after the date of the enact-
17 ment of this Act.

18 (2) CONTRARY TREATY OBLIGATIONS
19 UPHELD.—The amendments made by this section
20 shall not apply to the extent contrary to any treaty
21 obligation of the United States.

22 **SEC. 9. RULES RELATING TO FOREIGN OIL AND GAS IN-**
23 **COME.**

24 (a) SEPARATE BASKET FOR FOREIGN TAX CRED-
25 IT.—

1 (1) YEARS BEFORE 2007.—Paragraph (1) of
2 section 904(d) (relating to separate application of
3 section with respect to certain categories of income),
4 as in effect for years beginning before 2007, is
5 amended by striking “and” at the end of subpara-
6 graph (H), by redesignating subparagraph (I) as
7 subparagraph (J), and by inserting after subpara-
8 graph (H) the following new subparagraph:

9 “(I) foreign oil and gas income, and”.

10 (2) 2007 AND AFTER.—Paragraph (1) of sec-
11 tion 904(d), as in effect for years beginning after
12 2006, is amended by striking “and” at the end of
13 subparagraph (A), by striking the period at the end
14 of subparagraph (B) and inserting “, and”, and by
15 adding at the end the following:

16 “(C) foreign oil and gas income.”.

17 (b) DEFINITION.—

18 (1) YEARS BEFORE 2007.—Paragraph (2) of
19 section 904(d), as in effect for years beginning be-
20 fore 2007, is amended by redesignating subpara-
21 graphs (H) and (I) as subparagraphs (I) and (J),
22 respectively, and by inserting after subparagraph
23 (G) the following new subparagraph:

1 “(H) FOREIGN OIL AND GAS INCOME.—

2 The term ‘foreign oil and gas income’ has the
3 meaning given such term by section 954(g).”.

4 (2) 2007 AND AFTER.—Section 904(d)(2), as in
5 effect for years after 2006, is amended by redesign-
6 nating subparagraphs (J) and (K) as subparagraphs
7 (K) and (L) and by inserting after subparagraph (I)
8 the following:

9 “(J) FOREIGN OIL AND GAS INCOME.—For
10 purposes of this section—

11 “(i) IN GENERAL.—The term ‘foreign
12 oil and gas income’ has the meaning given
13 such term by section 954(g).

14 “(ii) COORDINATION.—Passive cat-
15 egory income and general category income
16 shall not include foreign oil and gas income
17 (as so defined).”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 904(d)(3)(F)(i) is amended by
20 striking “or (E)” and inserting “(E), or (I)”.

21 (2) Section 907(a) is hereby repealed.

22 (3) Section 907(c)(4) is hereby repealed.

23 (4) Section 907(f) is hereby repealed.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to taxable years beginning
3 after the date of the enactment of this Act.

4 (2) YEARS AFTER 2006.—The amendments
5 made by subsections (a)(2) and (b)(2) shall apply to
6 taxable years beginning after December 31, 2006.

7 (3) TRANSITIONAL RULES.—

8 (A) SEPARATE BASKET TREATMENT.—Any
9 taxes paid or accrued in a taxable year begin-
10 ning on or before the date of the enactment of
11 this Act, with respect to income which was de-
12 scribed in subparagraph (I) of section
13 904(d)(1) of the Internal Revenue Code of
14 1986 (as in effect on the day before the date
15 of the enactment of this Act), shall be treated
16 as taxes paid or accrued with respect to foreign
17 oil and gas income to the extent the taxpayer
18 establishes to the satisfaction of the Secretary
19 of the Treasury that such taxes were paid or
20 accrued with respect to foreign oil and gas in-
21 come.

22 (B) CARRYOVERS.—Any unused oil and
23 gas extraction taxes which under section 907(f)
24 of such Code (as so in effect) would have been
25 allowable as a carryover to the taxpayer's first

1 taxable year beginning after the date of the en-
 2 actment of this Act (without regard to the limi-
 3 tation of paragraph (2) of such section 907(f)
 4 for first taxable year) shall be allowed as
 5 carryovers under section 904(c) of such Code in
 6 the same manner as if such taxes were unused
 7 taxes under such section 904(c) with respect to
 8 foreign oil and gas extraction income.

9 (C) LOSSES.—The amendment made by
 10 subsection (c)(3) shall not apply to foreign oil
 11 and gas extraction losses arising in taxable
 12 years beginning on or before the date of the en-
 13 actment of this Act.

14 **SEC. 10. ELIMINATION OF DEFERRAL FOR FOREIGN OIL**
 15 **AND GAS EXTRACTION INCOME.**

16 (a) GENERAL RULE.—Paragraph (1) of section
 17 954(g) (defining foreign base company oil related income)
 18 is amended to read as follows:

19 “(1) IN GENERAL.—Except as otherwise pro-
 20 vided in this subsection, the term ‘foreign oil and
 21 gas income’ means any income of a kind which
 22 would be taken into account in determining the
 23 amount of—

24 “(A) foreign oil and gas extraction income
 25 (as defined in section 907(c)), or

1 “(B) foreign oil related income (as defined
2 in section 907(c)).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Subsections (a)(5), (b)(5), and (b)(6) of
5 section 954, and section 952(c)(1)(B)(ii)(I), are each
6 amended by striking “base company oil related in-
7 come” each place it appears (including in the head-
8 ing of subsection (b)(6)) and inserting “oil and gas
9 income”.

10 (2) Subsection (b)(4) of section 954 is amended
11 by striking “base company oil-related income” and
12 inserting “oil and gas income”.

13 (3) The subsection heading for subsection (g) of
14 section 954 is amended by striking “FOREIGN BASE
15 COMPANY OIL RELATED INCOME” and inserting
16 “FOREIGN OIL AND GAS INCOME”.

17 (4) Subparagraph (A) of section 954(g)(2) is
18 amended by striking “foreign base company oil re-
19 lated income” and inserting “foreign oil and gas in-
20 come”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years of foreign corpora-
23 tions beginning after the date of the enactment of this
24 Act, and to taxable years of United States shareholders

1 ending with or within such taxable years of foreign cor-
2 porations.

○