

109TH CONGRESS  
2D SESSION

# S. 2670

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

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IN THE SENATE OF THE UNITED STATES

APRIL 27, 2006

Mr. REID (for Mr. KERRY (for himself, Mr. KOHL, and Mr. LIEBERMAN)) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for  
 4 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 tax-  
 payers.
- Sec. 9. Rules relating to foreign oil and gas income.
- Sec. 10. Elimination of deferral for foreign oil and gas extraction income.

5 **SEC. 2. TERMINATION OF DEDUCTION FOR INTANGIBLE**  
 6 **DRILLING AND DEVELOPMENT COSTS.**

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

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

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

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

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

8 SEC. 4. TERMINATION OF ENHANCED OIL RECOVERY CRED-  
9 IT.

12       “(f) **TERMINATION.**—This section shall not apply to  
13   any taxable year beginning after the date of the enactment  
14   of this subsection.”.

18 SEC. 5. TERMINATION OF CERTAIN PROVISIONS OF THE  
19 ENERGY POLICY ACT OF 2005.

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

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

(3) Section 344 (relating to incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico).

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

(5) Section 357 (relating to comprehensive inventory of OCS oil and natural gas resources).

(6) Subtitle J of title IX (relating to ultra-deep-water and unconventional natural gas and other petroleum resources).

(b) TERMINATION OF ALASKA OFFSHORE ROYALTY  
SUSPENSION.—

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

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

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

(a) ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.—Section 168(e)(3)(E)(vii) is

1 amended by inserting “, and before the date of the enact-  
2 ment of the Energy Fairness for America Act” after  
3 “April 11, 2005”.

4 (b) TEMPORARY EXPENSING OF EQUIPMENT USED  
5 IN REFINING LIQUID FUELS.—Section 179C(c)(1) is  
6 amended—

7 (1) by striking “January 1, 2012” and insert-  
8 ing “the date of the enactment of the Energy Fair-  
9 ness for America Act”, and

10 (2) by striking “January 1, 2008” and insert-  
11 ing “the date of the enactment of the Energy Fair-  
12 ness for America Act”.

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

18 (d) NATURAL GAS GATHERING LINES TREATED AS  
19 7-YEAR PROPERTY.—Section 168(e)(3)(C)(iv) is amended  
20 by inserting “, and before the date of the enactment of  
21 the Energy Fairness for America Act” after “April 11,  
22 2005”.

23 (e) DETERMINATION OF SMALL REFINER EXCEP-  
24 TION TO OIL DEPLETION DEDUCTION.—Section 1328(b)  
25 of the Energy Policy Act of 2005 is amended by inserting

1 “and beginning before the date of the enactment of the  
2 Energy Fairness for America Act” after “this Act”.

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

6 “(5) TERMINATION.—This subsection shall not  
7 apply to any taxable year beginning after the date  
8 of the enactment of the Energy Fairness for Amer-  
9 ica Act.”.

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

13 **SEC. 7. REVALUATION OF LIFO INVENTORIES OF LARGE IN-**  
14 **TEGRATED OIL COMPANIES.**

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

19 (1) increase, effective as of the close of such  
20 taxable year, the value of each historic LIFO layer  
21 of inventories of crude oil, natural gas, or any other  
22 petroleum product (within the meaning of section  
23 4611) by the layer adjustment amount, and

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

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

8           (b) LAYER ADJUSTMENT AMOUNT.—For purposes of  
 9   this section—

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

13                   (A) \$18.75, and

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

18           (2) BARREL-OF-OIL EQUIVALENT.—The term  
 19           “barrel-of-oil equivalent” has the meaning given  
 20           such term by section 29(d)(5) (as in effect before its  
 21           redesignation by the Energy Tax Incentives Act of  
 22           2005).

23           (c) APPLICATION OF REQUIREMENT.—

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

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

4 (2) UNDERPAYMENTS OF ESTIMATED TAX.—No

5 addition to the tax shall be made under section 6655  
6 of the Internal Revenue Code of 1986 (relating to  
7 failure by corporation to pay estimated tax) with re-  
8 spect to any underpayment of an installment re-  
9 quired to be paid with respect to the taxable year  
10 described in subsection (a) to the extent such under-  
11 payment was created or increased by this section.

12 (d) APPLICABLE INTEGRATED OIL COMPANY.—For  
13 purposes of this section, the term “applicable integrated  
14 oil company” means an integrated oil company (as defined  
15 in section 291(b)(4) of the Internal Revenue Code of  
16 1986) which has an average daily worldwide production  
17 of crude oil of at least 500,000 barrels for the taxable  
18 year and which had gross receipts in excess of  
19 \$1,000,000,000 for its last taxable year ending during cal-  
20 endar year 2005. For purposes of this subsection all per-  
21 sons treated as a single employer under subsections (a)  
22 and (b) of section 52 of the Internal Revenue Code of  
23 1986 shall be treated as 1 person and, in the case of a  
24 short taxable year, the rule under section 448(c)(3)(B)  
25 shall apply.



1 **SEC. 8. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**  
 2 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

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

8 “(m) SPECIAL RULES RELATING TO DUAL CAPACITY  
 9 TAXPAYERS.—

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

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

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

21 “(i) is paid by such dual capacity tax-  
 22 payer pursuant to the generally applicable  
 23 income tax imposed by the country or pos-  
 24 session, or

25 “(ii) would be paid if the generally ap-  
 26 plicable income tax imposed by the country

1                   or possession were applicable to such dual  
2                   capacity taxpayer.

3                   Nothing in this paragraph shall be construed to  
4                   imply the proper treatment of any such amount  
5                   not in excess of the amount determined under  
6                   subparagraph (B).

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

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

13                  “(B) receives (or will receive) directly or  
14                  indirectly a specific economic benefit (as deter-  
15                  mined in accordance with regulations) from  
16                  such country or possession.

17                  “(3) GENERALLY APPLICABLE INCOME TAX.—  
18                  For purposes of this subsection—

19                  “(A) IN GENERAL.—The term ‘generally  
20                  applicable income tax’ means an income tax (or  
21                  a series of income taxes) which is generally im-  
22                  posed under the laws of a foreign country or  
23                  possession on income derived from the conduct  
24                  of a trade or business within such country or  
25                  possession.

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

4                   “(i) persons who are not dual capacity  
5                   taxpayers, and

6                   “(ii) persons who are citizens or resi-  
7                   dents of the foreign country or posses-  
8                   sion.”

9           (b) EFFECTIVE DATE.—

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

14           (2) CONTRARY TREATY OBLIGATIONS  
15           UPHELD.—The amendments made by this section  
16           shall not apply to the extent contrary to any treaty  
17           obligation of the United States.

18 **SEC. 9. RULES RELATING TO FOREIGN OIL AND GAS IN-**  
19 **COME.**

20           (a) SEPARATE BASKET FOR FOREIGN TAX CRED-  
21           IT.—

22           (1) YEARS BEFORE 2007.—Paragraph (1) of  
23           section 904(d) (relating to separate application of  
24           section with respect to certain categories of income),  
25           as in effect for years beginning before 2007, is

1 amended by striking “and” at the end of subpara-  
 2 graph (H), by redesignating subparagraph (I) as  
 3 subparagraph (J), and by inserting after subpara-  
 4 graph (H) the following new subparagraph:

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

6 (2) 2007 AND AFTER.—Paragraph (1) of sec-  
 7 tion 904(d), as in effect for years beginning after  
 8 2006, is amended by striking “and” at the end of  
 9 subparagraph (A), by striking the period at the end  
 10 of subparagraph (B) and inserting “, and”, and by  
 11 adding at the end the following:

12 “(C) foreign oil and gas income.”

13 (b) DEFINITION.—

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

20 “(H) FOREIGN OIL AND GAS INCOME.—

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

23 (2) 2007 AND AFTER.—Section 904(d)(2), as in  
 24 effect for years after 2006, is amended by redesign-  
 25 ating subparagraphs (J) and (K) as subparagraphs

(K) and (L) and by inserting after subparagraph (I) the following:

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

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

“(ii) COORDINATION.—Passive category income and general category income shall not include foreign oil and gas income (as so defined).”

(c) CONFORMING AMENDMENTS.—

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

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

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

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

(d) EFFECTIVE DATES.—

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

(2) YEARS AFTER 2006.—The amendments made by paragraphs (1)(B) and (2)(B) shall apply to taxable years beginning after December 31, 2006.

(3) TRANSITIONAL RULES.—

1 (A) SEPARATE BASKET TREATMENT.—Any  
2 taxes paid or accrued in a taxable year begin-  
3 ning on or before the date of the enactment of  
4 this Act, with respect to income which was de-  
5 scribed in subparagraph (I) of section  
6 904(d)(1) of such Code (as in effect on the day  
7 before the date of the enactment of this Act),  
8 shall be treated as taxes paid or accrued with  
9 respect to foreign oil and gas income to the ex-  
10 tent the taxpayer establishes to the satisfaction  
11 of the Secretary of the Treasury that such  
12 taxes were paid or accrued with respect to for-  
13 eign oil and gas income.

14 (B) CARRYOVERS.—Any unused oil and  
15 gas extraction taxes which under section 907(f)  
16 of such Code (as so in effect) would have been  
17 allowable as a carryover to the taxpayer's first  
18 taxable year beginning after the date of the en-  
19 actment of this Act (without regard to the limi-  
20 tation of paragraph (2) of such section 907(f)  
21 for first taxable year) shall be allowed as  
22 carryovers under section 904(c) of such Code in  
23 the same manner as if such taxes were unused  
24 taxes under such section 904(c) with respect to  
25 foreign oil and gas extraction income.

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

6 **SEC. 10. ELIMINATION OF DEFERRAL FOR FOREIGN OIL**  
 7 **AND GAS EXTRACTION INCOME.**

8 (a) GENERAL RULE.—Paragraph (1) of section  
 9 954(g) (defining foreign base company oil related income)  
 10 is amended to read as follows:

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

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

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

20 (b) CONFORMING AMENDMENTS.—

21 (1) Subsections (a)(5), (b)(5), and (b)(6) of  
 22 section 954, and section 952(c)(1)(B)(ii)(I), are each  
 23 amended by striking “base company oil related in-  
 24 come” each place it appears (including in the head-

1       ing of subsection (b)(8)) and inserting “oil and gas  
2       income”.

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

6           (3) The subsection heading for subsection (g) of  
7       section 954 is amended by striking “FOREIGN BASE  
8       COMPANY OIL RELATED INCOME” and inserting  
9       “FOREIGN OIL AND GAS INCOME”.

10          (4) Subparagraph (A) of section 954(g)(2) is  
11       amended by striking “foreign base company oil re-  
12       lated income” and inserting “foreign oil and gas in-  
13       come”.

14       (c) EFFECTIVE DATE.—The amendments made by  
15       this section shall apply to taxable years of foreign corpora-  
16       tions beginning after the date of the enactment of this  
17       Act, and to taxable years of United States shareholders  
18       ending with or within such taxable years of foreign cor-  
19       porations.

○