

110TH CONGRESS
2D SESSION

S. 2761

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and transfer the proceeds of the tax to the Highway Trust Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to impose a temporary windfall profit tax on crude oil and transfer the proceeds of the tax to the Highway Trust Fund, 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.**

4 This Act may be cited as the “Recapture Excess
5 Profits and Invest in Roads (REPAIR) Act of 2008”.

6 **SEC. 2. TEMPORARY WINDFALL PROFITS TAX.**

7 (a) IN GENERAL.—Subtitle E of the Internal Rev-
8 enue Code of 1986 (relating to alcohol, tobacco, and cer-

tain other excise taxes) is amended by adding at the end thereof the following new chapter:

**“CHAPTER 56—TEMPORARY WINDFALL
PROFITS ON CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; etc.

“Sec. 5898. Special rules and definitions.

5 “SEC. 5896. IMPOSITION OF TAX.

“(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any applicable taxpayer an excise tax in an amount equal to 25 percent of the windfall profit of such taxpayer for any taxable year beginning during 2008 or 2009.

“(b) APPLICABLE TAXPAYER.—For purposes of this chapter, the term ‘applicable taxpayer’ means, with respect to operations in the United States—

“(1) any integrated oil company (as defined in section 291(b)(4)), and

“(2) any other producer or refiner of crude oil with gross receipts from the sale of such crude oil or refined oil products for the taxable year exceeding \$1,000,000,000.

20 “SEC. 5897. WINDFALL PROFIT; ETC.

“(a) GENERAL RULE.—For purposes of this chapter, the term ‘windfall profit’ means the excess of the adjusted taxable income of the applicable taxpayer for the taxable

1 year over the reasonably inflated average profit for such
2 taxable year.

3 “(b) ADJUSTED TAXABLE INCOME.—For purposes of
4 this chapter, with respect to any applicable taxpayer, the
5 adjusted taxable income for any taxable year is equal to
6 the taxable income for such taxable year (within the mean-
7 ing of section 63 and determined without regard to this
8 subsection)—

9 “(1) increased by any interest expense deduc-
10 tion, charitable contribution deduction, and any net
11 operating loss deduction carried forward from any
12 prior taxable year, and

13 “(2) reduced by any interest income, dividend
14 income, and net operating losses to the extent such
15 losses exceed taxable income for the taxable year.

16 In the case of any applicable taxpayer which is a foreign
17 corporation, the adjusted taxable income shall be deter-
18 mined with respect to such income which is effectively con-
19 nected with the conduct of a trade or business in the
20 United States.

21 “(c) REASONABLY INFLATED AVERAGE PROFIT.—
22 For purposes of this chapter, with respect to any applica-
23 ble taxpayer, the reasonably inflated average profit for any
24 taxable year is an amount equal to the average of the ad-
25 justed taxable income of such taxpayer for taxable years

1 beginning during the 2003–2007 taxable year period (de-
 2 termined without regard to the taxable year with the high-
 3 est adjusted taxable income in such period) plus 10 per-
 4 cent of such average.

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

6 “(a) WITHHOLDING AND DEPOSIT OF TAX.—The
 7 Secretary shall provide such rules as are necessary for the
 8 withholding and deposit of the tax imposed under section
 9 5896.

10 “(b) RECORDS AND INFORMATION.—Each taxpayer
 11 liable for tax under section 5896 shall keep such records,
 12 make such returns, and furnish such information as the
 13 Secretary may by regulations prescribe.

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

17 “(d) CRUDE OIL.—The term ‘crude oil’ includes
 18 crude oil condensates and natural gasoline.

19 “(e) BUSINESSES UNDER COMMON CONTROL.—For
 20 purposes of this chapter, all members of the same con-
 21 trolled group of corporations (within the meaning of sec-
 22 tion 267(f)) and all persons under common control (within
 23 the meaning of section 52(b) but determined by treating
 24 an interest of more than 50 percent as a controlling inter-
 25 est) shall be treated as 1 person.

1 “(f) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this chapter.”.

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

“CHAPTER 56. TEMPORARY WINDFALL PROFIT ON CRUDE OIL.”.

7 (c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—
8 The first sentence of section 164(a) of the Internal Rev-
9 enue Code of 1986 (relating to deduction for taxes) is
10 amended by inserting after paragraph (5) the following
11 new paragraph:

12 “(6) The windfall profit tax imposed by section
13 5896.”.

14 (d) TRANSFER OF PROCEEDS TO HIGHWAY TRUST
15 FUND.—Section 9503(b)(1) of the Internal Revenue Code
16 of 1986 (relating to certain taxes) is amended by striking
17 “and” at the end of subparagraph (D), by striking the
18 period at the end of subparagraph (E) and inserting “,
19 and”, and by adding at the end the following new subpara-
20 graph:

21 “(F) section 5896 (relating to windfall
22 profit tax on crude oil).”.

23 (e) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply to taxable years beginning in 2008 and
2 2009.

3 (2) SUBSECTION (d).—The amendments made
4 by subsection (d) shall take effect on the date of the
5 enactment of this Act.

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