

111TH CONGRESS
2^D SESSION

S. 3405

To amend the Internal Revenue Code of 1986 to eliminate oil and gas company preferences.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2010

Mr. MENENDEZ (for himself, Mr. NELSON of Florida, and Mr. MERKLEY) 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 eliminate oil and gas company preferences.

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 “Close Big Oil Tax
5 Loopholes Act”.

6 **SEC. 2. LIMITATION ON DEDUCTION FOR INTANGIBLE**
7 **DRILLING AND DEVELOPMENT COSTS.**

8 (a) IN GENERAL.—Section 263(c) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new sentence: “This subsection shall not

1 apply to amounts paid or incurred by a taxpayer in any
2 taxable year in which such taxpayer is an applicable large
3 taxpayer (as defined in section 193(d)(2)).”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to amounts paid or incurred in tax-
6 able years beginning after December 31, 2010.

7 **SEC. 3. LIMITATION ON DEDUCTION FOR TERTIARY**
8 **INJECTANTS.**

9 (a) IN GENERAL.—Section 193 of the Internal Rev-
10 enue Code of 1986 is amended by adding at the end the
11 following new subsection:

12 “(d) APPLICATION WITH RESPECT TO CERTAIN
13 LARGE TAXPAYERS.—

14 “(1) IN GENERAL.—This section shall not apply
15 to amounts paid or incurred by a taxpayer in any
16 taxable year in which such taxpayer is an applicable
17 large taxpayer.

18 “(2) APPLICABLE LARGE TAXPAYER.—For pur-
19 poses of this section, the term ‘applicable large tax-
20 payer’ means, with respect to any taxable year, any
21 taxpayer with gross revenues for such taxable year
22 in excess of \$100,000,000.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to amounts paid or incurred in tax-
25 able years beginning after December 31, 2010.

1 **SEC. 4. LIMITATION ON EXCEPTION FROM PASSIVE ACTIV-**
2 **ITY RULES FOR WORKING INTERESTS IN OIL**
3 **OR GAS PROPERTY.**

4 (a) IN GENERAL.—Paragraph (3) of section 469(c)
5 of the Internal Revenue Code of 1986 is amended—

6 (1) in subparagraph (A), by striking “the tax-
7 payer” and inserting “a taxpayer (other than an a
8 taxpayer who is an applicable large taxpayer (as de-
9 fined in section 193(d)(2)) for the taxable year”’,
10 and

11 (2) in subparagraph (B), by inserting “other
12 than an a taxpayer who is an applicable large tax-
13 payer (as so defined) for the taxable year” after
14 “any taxpayer”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2010.

18 **SEC. 5. LIMITATION ON PERCENTAGE DEPLETION ALLOW-**
19 **ANCE FOR OIL AND GAS WELLS.**

20 (a) IN GENERAL.—Section 613A of the Internal Rev-
21 enue Code of 1986 is amended by adding at the end the
22 following new subsection:

23 “(f) APPLICATION WITH RESPECT TO CERTAIN
24 LARGE TAXPAYERS.—In the case of any taxable year in
25 which the taxpayer is an applicable large taxpayer (as de-

1 fined in section 193(d)(2)), the allowance for percentage
2 depletion shall be zero.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to taxable years beginning after
5 December 31, 2010.

6 **SEC. 6. LIMITATION ON DEDUCTION FOR INCOME ATTRIB-**
7 **UTABLE TO DOMESTIC PRODUCTION OF OIL,**
8 **NATURAL GAS, OR PRIMARY PRODUCTS**
9 **THEREOF.**

10 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
11 tion 199(c) of the Internal Revenue Code of 1986 is
12 amended by adding at the end the following new subpara-
13 graph:

14 “(E) SPECIAL RULE FOR CERTAIN OIL
15 AND GAS INCOME.—In the case of any taxpayer
16 who is an applicable large taxpayer (as defined
17 in section 193(d)(2)) for the taxable year, the
18 term ‘domestic production gross receipts’ shall
19 not include gross receipts from the production,
20 transportation, or distribution of oil, natural
21 gas, or any primary product (within the mean-
22 ing of subsection (d)(9)) thereof.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 December 31, 2010.

1 **SEC. 7. EXPANSION OF 7-YEAR AMORTIZATION OF GEO-**
2 **LOGICAL AND GEOPHYSICAL EXPENDITURES**
3 **TO APPLICABLE LARGE TAXPAYERS.**

4 (a) **IN GENERAL.**—Subparagraph (A) of section
5 167(h)(5) of the Internal Revenue Code of 1986 is amend-
6 ed by inserting “or an applicable large taxpayer (as de-
7 fined in section 193(d)(2))” after “major integrated oil
8 company”.

9 (b) **CONFORMING AMENDMENT.**—The heading for
10 paragraph (5) of section 167(h) of such Code is amended
11 by inserting “AND APPLICABLE LARGE TAXPAYERS” after
12 “OIL COMPANIES”.

13 (c) **EFFECTIVE DATE.**—The amendments made by
14 this section shall apply to amounts paid or incurred in tax-
15 able years beginning after December 31, 2010.

16 **SEC. 8. TAX ON CRUDE OIL AND NATURAL GAS PRODUCED**
17 **FROM THE OUTER CONTINENTAL SHELF IN**
18 **THE GULF OF MEXICO.**

19 (a) **IN GENERAL.**—Subtitle E of the Internal Rev-
20 enue Code of 1986 (relating to alcohol, tobacco, and cer-
21 tain other excise taxes) is amended by adding at the end
22 the following new chapter:

1 **“CHAPTER 56—TAX ON SEVERANCE OF**
2 **CRUDE OIL AND NATURAL GAS FROM**
3 **THE OUTER CONTINENTAL SHELF IN**
4 **THE GULF OF MEXICO**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Taxable crude oil or natural gas and removal price.

“Sec. 5898. Special rules and definitions.

5 **“SEC. 5896. IMPOSITION OF TAX.**

6 “(a) IN GENERAL.—In addition to any other tax im-
7 posed under this title, there is hereby imposed a tax equal
8 to 13 percent of the removal price of any taxable crude
9 oil or natural gas removed from the premises during any
10 taxable period.

11 “(b) CREDIT FOR FEDERAL ROYALTIES PAID.—

12 “(1) IN GENERAL.—There shall be allowed as a
13 credit against the tax imposed by subsection (a) with
14 respect to the production of any taxable crude oil or
15 natural gas an amount equal to the aggregate
16 amount of royalties paid under Federal law with re-
17 spect to such production.

18 “(2) LIMITATION.—The aggregate amount of
19 credits allowed under paragraph (1) to any taxpayer
20 for any taxable period shall not exceed the amount
21 of tax imposed by subsection (a) for such taxable pe-
22 riod.

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 or natural gas.

4 **“SEC. 5897. TAXABLE CRUDE OIL OR NATURAL GAS AND RE-**
5 **MOVAL PRICE.**

6 “(a) TAXABLE CRUDE OIL OR NATURAL GAS.—For
7 purposes of this chapter, the term ‘taxable crude oil or
8 natural gas’ means crude oil or natural gas which is pro-
9 duced from Federal submerged lands on the outer Conti-
10 nental Shelf in the Gulf of Mexico pursuant to a lease
11 entered into with the United States which authorizes the
12 production.

13 “(b) REMOVAL PRICE.—For purposes of this chap-
14 ter—

15 “(1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, the term ‘removal price’
17 means—

18 “(A) in the case of taxable crude oil, the
19 amount for which a barrel of such crude oil is
20 sold, and

21 “(B) in the case of taxable natural gas, the
22 amount per 1,000 cubic feet for which such
23 natural gas is sold.

24 “(2) SALES BETWEEN RELATED PERSONS.—In
25 the case of a sale between related persons, the re-

1 removal price shall not be less than the constructive
2 sales price for purposes of determining gross income
3 from the property under section 613.

4 “(3) OIL OR GAS REMOVED FROM PROPERTY
5 BEFORE SALE.—If crude oil or natural gas is re-
6 moved from the property before it is sold, the re-
7 moval price shall be the constructive sales price for
8 purposes of determining gross income from the prop-
9 erty under section 613.

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

14 “(A) such oil shall be treated as removed
15 on the day such manufacture or conversion be-
16 gins, and

17 “(B) the removal price shall be the con-
18 structive sales price for purposes of determining
19 gross income from the property under section
20 613.

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

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

24 “(a) ADMINISTRATIVE REQUIREMENTS.—

1 “(1) WITHHOLDING AND DEPOSIT OF TAX.—
2 The Secretary shall provide for the withholding and
3 deposit of the tax imposed under section 5896 on a
4 quarterly basis.

5 “(2) RECORDS AND INFORMATION.—Each tax-
6 payer liable for tax under section 5896 shall keep
7 such records, make such returns, and furnish such
8 information (to the Secretary and to other persons
9 having an interest in the taxable crude oil or natural
10 gas) with respect to such oil as the Secretary may
11 by regulations prescribe.

12 “(3) TAXABLE PERIODS; RETURN OF TAX.—

13 “(A) TAXABLE PERIOD.—Except as pro-
14 vided by the Secretary, each calendar year shall
15 constitute a taxable period.

16 “(B) RETURNS.—The Secretary shall pro-
17 vide for the filing, and the time for filing, of the
18 return of the tax imposed under section 5896.

19 “(b) DEFINITIONS.—For purposes of this chapter—

20 “(1) PRODUCER.—The term ‘producer’ means
21 the holder of the economic interest with respect to
22 the crude oil or natural gas.

23 “(2) CRUDE OIL.—The term ‘crude oil’ includes
24 crude oil condensates and natural gasoline.

1 “(3) PREMISES AND CRUDE OIL PRODUCT.—

2 The terms ‘premises’ and ‘crude oil product’ have
3 the same meanings as when used for purposes of de-
4 termining gross income from the property under sec-
5 tion 613.

6 “(c) ADJUSTMENT OF REMOVAL PRICE.—In deter-
7 mining the removal price of oil or natural gas from a prop-
8 erty in the case of any transaction, the Secretary may ad-
9 just the removal price to reflect clearly the fair market
10 value of oil or natural gas removed.

11 “(d) REGULATIONS.—The Secretary shall prescribe
12 such regulations as may be necessary or appropriate to
13 carry out the purposes of this chapter.”.

14 (b) DEDUCTIBILITY OF TAX.—The first sentence of
15 section 164(a) of the Internal Revenue Code of 1986 (re-
16 lating to deduction for taxes) is amended by inserting
17 after paragraph (5) the following new paragraph:

18 “(6) The tax imposed by section 5896(a) (after
19 application of section 5896(b)) on the severance of
20 crude oil or natural gas from the outer Continental
21 Shelf in the Gulf of Mexico.”.

22 (c) CLERICAL AMENDMENT.—The table of chapters
23 for subtitle E of such Code is amended by adding at the
24 end the following new item:

 “CHAPTER 56. Tax on severance of crude oil and natural gas
 from the outer Continental Shelf in the Gulf of
 Mexico.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to crude oil or natural gas removed
 3 after the date of the enactment of this Act.

4 **SEC. 9. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
 5 **APPLICABLE TO LARGE INTEGRATED OIL**
 6 **COMPANIES WHICH ARE DUAL CAPACITY**
 7 **TAXPAYERS.**

8 (a) IN GENERAL.—Section 901 of the Internal Rev-
 9 enue Code of 1986 (relating to credit for taxes of foreign
 10 countries and of possessions of the United States) is
 11 amended by redesignating subsection (m) as subsection
 12 (n) and by inserting after subsection (l) the following new
 13 subsection:

14 “(m) SPECIAL RULES RELATING TO LARGE INTE-
 15 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
 16 TAXPAYERS.—

17 “(1) GENERAL RULE.—Notwithstanding any
 18 other provision of this chapter, any amount paid or
 19 accrued by a dual capacity taxpayer which is a large
 20 integrated oil company to a foreign country or pos-
 21 session of the United States for any period shall not
 22 be considered a tax—

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

1 “(B) to the extent such amount exceeds
2 the amount (determined in accordance with reg-
3 ulations) which—

4 “(i) is paid by such dual capacity tax-
5 payer pursuant to the generally applicable
6 income tax imposed by the country or pos-
7 session, or

8 “(ii) would be paid if the generally ap-
9 plicable income tax imposed by the country
10 or possession were applicable to such dual
11 capacity taxpayer.

12 Nothing in this paragraph shall be construed to
13 imply the proper treatment of any such amount not
14 in excess of the amount determined under subpara-
15 graph (B).

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

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

22 “(B) receives (or will receive) directly or
23 indirectly a specific economic benefit (as deter-
24 mined in accordance with regulations) from
25 such country or possession.

1 “(3) GENERALLY APPLICABLE INCOME TAX.—

2 For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘generally
4 applicable income tax’ means an income tax (or
5 a series of income taxes) which is generally im-
6 posed under the laws of a foreign country or
7 possession on income derived from the conduct
8 of a trade or business within such country or
9 possession.

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

13 “(i) persons who are not dual capacity
14 taxpayers, and

15 “(ii) persons who are citizens or resi-
16 dents of the foreign country or possession.

17 “(4) LARGE INTEGRATED OIL COMPANY.—For
18 purposes of this subsection, the term ‘large inte-
19 grated oil company’ means, with respect to any tax-
20 able year, an integrated oil company (as defined in
21 section 291(b)(4)) which—

22 “(A) had gross receipts in excess of
23 \$1,000,000,000 for such taxable year, and

1 “(B) has an average daily worldwide pro-
2 duction of crude oil of at least 500,000 barrels
3 for such taxable year.”.

4 (b) EFFECTIVE DATE.—

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

9 (2) CONTRARY TREATY OBLIGATIONS
10 UPHELD.—The amendments made by this section
11 shall not apply to the extent contrary to any treaty
12 obligation of the United States.

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