

111TH CONGRESS
1ST SESSION

S. 888

To amend the Internal Revenue Code of 1986 to terminate certain incentives
for oil and gas.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

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 terminate
certain incentives for oil and gas.

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 “Oil Industry Tax
5 Break Repeal Act of 2009”.

TITLE I—REPEAL OF OIL INDUSTRY TAX BREAKS

SEC. 101. LIMITATION ON PERCENTAGE DEPLETION.

(a) IN GENERAL.—Section 613A of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) LIMITATION ON AGGREGATE AMOUNT OF DEPLETION.—In the case of any oil or gas well, the allowance for depletion allowed under section 613 shall not exceed the basis of the taxpayer in such property.”.

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

SEC. 102. TERMINATION OF TREATMENT OF NATURAL GAS DISTRIBUTION LINES AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(E)(viii) of the Internal Revenue Code of 1986 is amended by striking “before January 1, 2011” and inserting “on or before the date of the enactment of the Oil Industry Tax Break Repeal Act of 2009”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to property placed in service on and after the date of the enactment of this Act.

1 (2) EXCEPTION.—The amendment made by this
 2 section shall not apply to any property with respect
 3 to which the taxpayer or a related party has entered
 4 into a binding contract for the construction thereof
 5 on or before the date of the enactment of the Oil In-
 6 dustry Tax Break Repeal Act of 2009, or, in the
 7 case of self-constructed property, has started con-
 8 struction on or before such date.

9 **SEC. 103. TERMINATION OF TEMPORARY EXPENSING FOR**
 10 **EQUIPMENT USED IN REFINING OF LIQUID**
 11 **FUELS.**

12 (a) IN GENERAL.—Section 179C(c)(1) of the Inter-
 13 nal Revenue Code of 1986 is amended—

14 (1) by striking “before January 1, 2014” in
 15 subparagraph (B) and inserting “on or before the
 16 date of the enactment of the Oil Industry Tax Break
 17 Repeal Act of 2009”, and

18 (2) by striking “before January 1, 2010” each
 19 place it appears in subparagraph (F) and inserting
 20 “on or before the date of the enactment of the Oil
 21 Industry Tax Break Repeal Act of 2009”.

22 (b) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to property placed in service on
 24 and after the date of the enactment of this Act.

1 **SEC. 104. NATURAL GAS GATHERING LINES TREATED AS 15-**
 2 **YEAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (E) of section
 4 168(e)(3) of the Internal Revenue Code of 1986, as
 5 amended by section 102, is amended by inserting “, and”
 6 at the end of clause (viii), by striking the period at the
 7 end of clause (ix) and inserting “, and”, and by adding
 8 at the end the following new clause:

9 “(x) any natural gas gathering line
 10 the original use of which commences with
 11 the taxpayer after the date of the enact-
 12 ment of this clause.”.

13 (b) ALTERNATIVE SYSTEM.—The table contained in
 14 section 168(g)(3)(B) of the Internal Revenue Code of
 15 1986 (relating to special rule for property assigned to
 16 classes) is amended by inserting after the item relating
 17 to subparagraph (E)(ix) the following new item:

“(E)(x) 22”.

18 (c) CONFORMING AMENDMENT.—Clause (iv) of sec-
 19 tion 168(e)(3) of the Internal Revenue Code of 1986 is
 20 amended by inserting “and on or before the date of the
 21 enactment of the Oil Industry Tax Break Repeal Act of
 22 2009” after “April 11, 2005”.

23 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply to property placed in service
 3 on and after the date of the enactment of this Act.

4 (2) EXCEPTION.—The amendments made by
 5 this section shall not apply to any property with re-
 6 spect to which the taxpayer or a related party has
 7 entered into a binding contract for the construction
 8 thereof on or before the date of the enactment of the
 9 Oil Industry Tax Break Repeal Act of 2009, or, in
 10 the case of self-constructed property, has started
 11 construction on or before such date.

12 **SEC. 105. TERMINATION OF DEDUCTION FOR INTANGIBLE**
 13 **DRILLING AND DEVELOPMENT COSTS.**

14 (a) IN GENERAL.—Section 263(c) of the Internal
 15 Revenue Code of 1986 is amended by adding at the end
 16 the following new sentence: “This subsection shall not
 17 apply to any taxable year beginning after the date of the
 18 enactment of this sentence.”.

19 (b) CONFORMING AMENDMENTS.—Paragraphs (2)
 20 and (3) of section 291(b) of the Internal Revenue Code
 21 of 1986 are each amended by striking “section 263(c),
 22 616(a),” and inserting “section 616(a)”.

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

1 **SEC. 106. TERMINATION OF ENHANCED OIL RECOVERY**
 2 **CREDIT.**

3 (a) IN GENERAL.—Section 43 of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new subsection:

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

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. 107. TERMINATION OF CREDIT FOR PRODUCING OIL**
 13 **AND GAS FROM MARGINAL WELLS.**

14 (a) IN GENERAL.—Section 45I of the Internal Rev-
 15 enue Code of 1986 is amended by adding at the end the
 16 following new subsection:

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

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

23 **SEC. 108. TERMINATION OF TREATMENT OF ALASKA NAT-**
 24 **URAL GAS PIPELINES AS 7-YEAR PROPERTY.**

25 (a) IN GENERAL.—Section 168(e)(3)(C)(iii) of the
 26 Internal Revenue Code of 1986 is amended by inserting

1 “placed in service on or before the date of the enactment
 2 of the Oil Industry Tax Break Repeal Act of 2009” after
 3 “Alaska natural gas pipeline”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall apply to property placed in service on
 6 and after the date of the enactment of this Act.

7 **SEC. 109. DENIAL OF DEDUCTION FOR LARGE INTEGRATED**
 8 **OIL COMPANIES FOR INCOME ATTRIBUTABLE**
 9 **TO DOMESTIC PRODUCTION OF OIL, GAS, OR**
 10 **PRIMARY PRODUCTS THEREOF.**

11 (a) IN GENERAL.—Subparagraph (B) of section
 12 199(c)(4) of the Internal Revenue Code of 1986 (relating
 13 to exceptions) is amended by striking “or” at the end of
 14 clause (ii), by striking the period at the end of clause (iii)
 15 and inserting “, or”, and by inserting after clause (iii) the
 16 following new clause:

17 “(iv) in the case of a taxpayer which
 18 is a large integrated oil company, oil re-
 19 lated qualified production activities (within
 20 the meaning of subsection (d)(9)(B)).”.

21 (b) LARGE INTEGRATED OIL COMPANY.—Subsection
 22 (c) of section 199 of the Internal Revenue Code of 1986
 23 is amended by adding at the end the following new para-
 24 graph:

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

6 “(A) had gross receipts in excess of
 7 \$1,000,000,000 for such taxable year, and

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

11 (c) CONFORMING AMENDMENT.—Section
 12 199(d)(9)(A) of the Internal Revenue Code of 1986 is
 13 amended by inserting “(other than a large integrated oil
 14 company (as defined in subsection (c)(8))” after “tax-
 15 payer”.

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

19 **SEC. 110. REVALUATION OF LIFO INVENTORIES OF LARGE**
 20 **INTEGRATED OIL COMPANIES.**

21 (a) GENERAL RULE.—Notwithstanding any other
 22 provision of law, if a taxpayer is an applicable integrated
 23 oil company for its last taxable year ending in calendar
 24 year 2008, the taxpayer shall—

1 (1) increase, effective as of the close of such
 2 taxable year, the value of each historic LIFO layer
 3 of inventories of crude oil, natural gas, or any other
 4 petroleum product (within the meaning of section
 5 4611) by the layer adjustment amount, and

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

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

13 (b) LAYER ADJUSTMENT AMOUNT.—For purposes of
 14 this section—

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

18 (A) \$18.75, and

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

23 (2) BARREL-OF-OIL EQUIVALENT.—The term
 24 “barrel-of-oil equivalent” has the meaning given
 25 such term by section 29(d)(5) (as in effect before its

1 redesignation by the Energy Tax Incentives Act of
2 2005).

3 (c) APPLICATION OF REQUIREMENT.—

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

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

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

15 (d) APPLICABLE INTEGRATED OIL COMPANY.—For
16 purposes of this section, the term “applicable integrated
17 oil company” means an integrated oil company (as defined
18 in section 291(b)(4) of the Internal Revenue Code of
19 1986) which has an average daily worldwide production
20 of crude oil of at least 500,000 barrels for the taxable
21 year and which had gross receipts in excess of
22 \$1,000,000,000 for its last taxable year ending during cal-
23 endar year 2008. For purposes of this subsection all per-
24 sons treated as a single employer under subsections (a)
25 and (b) of section 52 of the Internal Revenue Code of

1 1986 shall be treated as 1 person and, in the case of a
 2 short taxable year, the rule under section 448(c)(3)(B)
 3 shall apply.

4 **SEC. 111. 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

“(B) to the extent such amount exceeds the amount (determined in accordance with regulations) which—

“(i) is paid by such dual capacity taxpayer pursuant to the generally applicable income tax imposed by the country or possession, or

“(ii) would be paid if the generally applicable income tax imposed by the country or possession were applicable to such dual capacity taxpayer.

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

“(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term ‘dual capacity taxpayer’ means, with respect to any foreign country or possession of the United States, a person who—

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

“(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from 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.

13 **SEC. 112. TERMINATION OF DEDUCTION FOR TERTIARY**
 14 **INJECTANTS.**

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

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

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

1 **TITLE II—ENERGY TRUST FUND**

2 **SEC. 201. DEDICATION OF RESULTING REVENUES TO THE**
 3 **ENERGY TRUST FUND.**

4 (a) IN GENERAL.—Subchapter A of chapter 98 of the
 5 Internal Revenue Code of 1986 (relating to trust fund
 6 code) is amended by adding at the end the following new
 7 section:

8 **“SEC. 9511. ENERGY TRUST FUND.**

9 “(a) ESTABLISHMENT.—There is established in the
 10 Treasury of the United States a trust fund to be known
 11 as the ‘Energy Trust Fund’, consisting of such amounts
 12 as may be appropriated or credited to such Fund as pro-
 13 vided in this section or section 9602(b).

14 “(b) TRANSFERS TO TRUST.—There are hereby ap-
 15 propriated to the Energy Trust Fund amounts equivalent
 16 to the revenues resulting from the amendments made by
 17 the title I of the Oil Industry Tax Break Repeal Act of
 18 2009.

19 “(c) EXPENDITURES.—Amounts in the Energy Trust
 20 Fund shall be available, as provided in appropriation Acts,
 21 only for the purpose of making expenditures—

22 “(1) to accelerate the use of clean domestic re-
 23 newable energy resources and alternative fuels;

24 “(2) to promote the utilization of energy-effi-
 25 cient products and practices and conservation; and

1 “(3) to increase research, development, and de-
2 ployment of clean renewable energy and efficiency
3 technologies.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for such subchapter is amended by adding at the end the
6 following new item:

“Sec. 9511. Energy Trust Fund.”.

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