

115TH CONGRESS
2D SESSION

S. 2287

To repeal the medical device excise tax, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2018

Mr. MARKEY (for himself and Ms. WARREN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To repeal the medical device excise tax, 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 “No Taxation on Device
5 Innovation Act”.

6 **SEC. 2. REPEAL OF THE MEDICAL DEVICE EXCISE TAX.**

7 (a) IN GENERAL.—Chapter 32 of the Internal Rev-
8 enue Code of 1986 is amended by striking subchapter E.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Subsection (a) of section 4221 of such Code
11 is amended by striking the last sentence.

1 (2) Paragraph (2) of section 6416(b) of such
2 Code is amended by striking the last sentence.

3 (c) CLERICAL AMENDMENT.—The table of sub-
4 chapters for chapter 32 of such Code is amended by strik-
5 ing the item related to subchapter E.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to sales after December 31, 2017.

8 **SEC. 3. PROHIBITION ON USING LAST-IN, FIRST-OUT AC-**
9 **COUNTING FOR MAJOR INTEGRATED OIL**
10 **COMPANIES.**

11 (a) IN GENERAL.—Section 472 of the Internal Rev-
12 enue Code of 1986 is amended by adding at the end the
13 following new subsection:

14 “(h) MAJOR INTEGRATED OIL COMPANIES.—Not-
15 withstanding any other provision of this section, a major
16 integrated oil company (as defined in section 167(h)) may
17 not use the method provided in subsection (b) in
18 inventorying of any goods.”.

19 (b) EFFECTIVE DATE AND SPECIAL RULE.—

20 (1) IN GENERAL.—The amendment made by
21 subsection (a) shall apply to taxable years beginning
22 after December 31, 2017.

23 (2) CHANGE IN METHOD OF ACCOUNTING.—In
24 the case of any taxpayer required by the amendment
25 made by this section to change its method of ac-

counting for its first taxable year beginning after the date of the enactment of this Act—

(A) such change shall be treated as initiated by the taxpayer;

(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over a period (not greater than 8 taxable years) beginning with such first taxable year.

SEC. 4. ELIGIBILITY FOR NEW LEASES AND THE TRANSFER OF LEASES.

(a) DEFINITIONS.—In this section:

(1) COVERED LEASE.—The term “covered lease” means a lease for oil or gas production in the Gulf of Mexico that is—

(A) in existence on the date of enactment of this Act;

(B) issued by the Department of the Interior under section 304 of the Outer Continental Shelf Deep Water Royalty Relief Act (43 U.S.C. 1337 note; Public Law 104–58); and

1 (C) not subject to limitations on royalty re-
2 lief based on market price that are equal to or
3 less than the price thresholds described in
4 clauses (v) through (vii) of section 8(a)(3)(C) of
5 the Outer Continental Shelf Lands Act (43
6 U.S.C. 1337(a)(3)(C)).

7 (2) LESSEE.—The term “lessee” includes any
8 person or other entity that controls, is controlled by,
9 or is in or under common control with, a lessee.

10 (3) SECRETARY.—The term “Secretary” means
11 the Secretary of the Interior.

12 (b) ISSUANCE OF NEW LEASES.—

13 (1) IN GENERAL.—The Secretary shall not
14 issue any new lease that authorizes the production
15 of oil or natural gas under the Outer Continental
16 Shelf Lands Act (43 U.S.C. 1331 et seq.) to a per-
17 son described in paragraph (2) unless the person has
18 renegotiated each covered lease with respect to which
19 the person is a lessee to modify the payment respon-
20 sibilities of the person to require the payment of roy-
21 alties if the price of oil and natural gas is greater
22 than or equal to the price thresholds described in
23 clauses (v) through (vii) of section 8(a)(3)(C) of the
24 Outer Continental Shelf Lands Act (43 U.S.C.
25 1337(a)(3)(C)).

1 (2) PERSONS DESCRIBED.—A person referred
2 to in paragraph (1) is a person that—

3 (A) is a lessee that—

4 (i) holds a covered lease on the date
5 on which the Secretary considers the
6 issuance of the new lease; or

7 (ii) was issued a covered lease before
8 the date of enactment of this Act, but
9 transferred the covered lease to another
10 person or entity (including a subsidiary or
11 affiliate of the lessee) after the date of en-
12 actment of this Act; or

13 (B) any other person that has any direct
14 or indirect interest in, or that derives any ben-
15 efit from, a covered lease.

16 (3) MULTIPLE LESSEES.—

17 (A) IN GENERAL.—For purposes of para-
18 graph (1), if there are multiple lessees that own
19 a share of a covered lease, the Secretary may
20 implement separate agreements with any lessee
21 with a share of the covered lease that modifies
22 the payment responsibilities with respect to the
23 share of the lessee to include price thresholds
24 that are equal to or less than the price thresh-
25 olds described in clauses (v) through (vii) of

1 section 8(a)(3)(C) of the Outer Continental
2 Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)).

3 (B) TREATMENT OF SHARE AS COVERED
4 LEASE.—Beginning on the effective date of an
5 agreement under subparagraph (A), any share
6 subject to the agreement shall not constitute a
7 covered lease with respect to any lessees that
8 entered into the agreement.

9 (c) TRANSFERS.—A lessee or any other person who
10 has any direct or indirect interest in, or who derives a
11 benefit from, a lease shall not be eligible to obtain by sale
12 or other transfer (including through a swap, spinoff, serv-
13 icing, or other agreement) any covered lease, the economic
14 benefit of any covered lease, or any other lease for the
15 production of oil or natural gas in the Gulf of Mexico
16 under the Outer Continental Shelf Lands Act (43 U.S.C.
17 1331 et seq.), unless the lessee or other person has—

18 (1) renegotiated each covered lease with respect
19 to which the lessee or person is a lessee, to modify
20 the payment responsibilities of the lessee or person
21 to include price thresholds that are equal to or less
22 than the price thresholds described in clauses (v)
23 through (vii) of section 8(a)(3)(C) of the Outer Con-
24 tinental Shelf Lands Act (43 U.S.C. 1337(a)(3)(C));
25 or

1 (2) entered into an agreement with the Sec-
 2 retary to modify the terms of all covered leases of
 3 the lessee or other person to include limitations on
 4 royalty relief based on market prices that are equal
 5 to or less than the price thresholds described in
 6 clauses (v) through (vii) of section 8(a)(3)(C) of the
 7 Outer Continental Shelf Lands Act (43 U.S.C.
 8 1337(a)(3)(C)).

9 (d) PRICE THRESHOLDS FOR ROYALTY SUSPENSION
 10 PROVISIONS.—

11 (1) IN GENERAL.—The Secretary shall agree to
 12 a request by any lessee to amend any lease issued
 13 for any Central and Western Gulf of Mexico tract
 14 during the period of January 1, 1996, through No-
 15 vember 28, 2000, to incorporate price thresholds ap-
 16 plicable to royalty suspension provisions, that are
 17 equal to or less than the price thresholds described
 18 in clauses (v) through (vii) of section 8(a)(3)(C) of
 19 the Outer Continental Shelf Lands Act (43 U.S.C.
 20 1337(a)(3)(C)).

21 (2) REQUIREMENT.—

22 (A) IN GENERAL.—A lease amended under
 23 paragraph (1) shall impose the new or revised
 24 price thresholds effective January 1, 2018.

1 (B) EXISTING LEASE PROVISIONS.—Exist-
2 ing lease provisions for a lease amended under
3 paragraph (1) shall prevail through December
4 31, 2017.

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