AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Oil Industry Tax 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.

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

SEC. 103. TERMINATION OF TEMPORARY EXPENSING FOR EQUIPMENT USED IN REFINING OF LIQUID FUELS.

(a) IN GENERAL.—Section 179C(c)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''before January 1, 2014'' in subparagraph (B) and inserting ''on or before the date of the enactment of the Oil Industry Tax Break Repeal Act of 2009'', and

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

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

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

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

"(x) any natural gas gathering line the original use of which commences with the taxpayer after the date of the enactment of this clause.".

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

"(E)(x) ..... 22".

(c) CONFORMING AMENDMENT.—Clause (iv) of section 168(e)(3) of the Internal Revenue Code of 1986 is amended by inserting "and on or before the date of the enactment of the Oil Industry Tax Break Repeal Act of 2009" after "April 11, 2005".

(d) EFFECTIVE DATE.—

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

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

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

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

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

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

SEC. 106. TERMINATION OF ENHANCED OIL RECOVERY CREDIT.

(a) IN GENERAL.—Section 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) TERMINATION.—This section shall not apply to any taxable year beginning after the date of the enactment of this subsection.''.

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

(a) IN GENERAL.—Section 45I of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(e) TERMINATION.—This section shall not apply to any taxable year beginning after the date of the enactment of this subsection.''.

(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. 108. TERMINATION OF TREATMENT OF ALASKA NATURAL GAS PIPELINES AS 7-YEAR PROPERTY.

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

"placed in service on or before the date of the enactment of the Oil Industry Tax Break Repeal Act of 2009" after "Alaska natural gas pipeline".

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

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

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

> "(iv) in the case of a taxpayer which is a large integrated oil company, oil related qualified production activities (within the meaning of subsection (d)(9)(B)).".

(b) LARGE INTEGRATED OIL COMPANY.—Subsection (c) of section 199 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(8) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(c) CONFORMING AMENDMENT.—Section 199(d)(9)(A) of the Internal Revenue Code of 1986 is amended by inserting "(other than a large integrated oil company (as defined in subsection (c)(8))" after "taxpayer".

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

SEC. 110. REVALUATION OF LIFO INVENTORIES OF LARGE INTEGRATED OIL COMPANIES.

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

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

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

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

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

(1) IN GENERAL.—The term ''layer adjustment amount'' means, with respect to any historic LIFO layer, the product of—

(A) $18.75, and

(B) the number of barrels of crude oil (or in the case of natural gas or other petroleum products, the number of barrel-of-oil equivalents) represented by the layer.

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

redesignation by the Energy Tax Incentives Act of 2005).

(c) APPLICATION OF REQUIREMENT.—

(1) NO CHANGE IN METHOD OF ACCOUNTING.—Any adjustment required by this section shall not be treated as a change in method of accounting.

(2) UNDERPAYMENTS OF ESTIMATED TAX.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1986 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid with respect to the taxable year described in subsection (a) to the extent such underpayment was created or increased by this section.

(d) APPLICABLE INTEGRATED OIL COMPANY.—For purposes of this section, the term ''applicable integrated oil company'' means an integrated oil company (as defined in section 291(b)(4) of the Internal Revenue Code of 1986) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year and which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2008. For purposes of this subsection all persons treated as a single employer under subsections (a) and (b) of section 52 of the Internal Revenue Code of

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

SEC. 111. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 (relating to credit for taxes of foreign countries and of possessions of the United States) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULES RELATING TO LARGE INTEGRATED OIL COMPANIES WHICH ARE DUAL CAPACITY TAXPAYERS.—

''(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer which is a large integrated oil company to a foreign country or possession of the United States for any period shall not be considered a tax—

''(A) if, for such period, the foreign country or possession does not impose a generally 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.

"(3) GENERALLY APPLICABLE INCOME TAX.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'generally applicable income tax' means an income tax (or a series of income taxes) which is generally imposed under the laws of a foreign country or possession on income derived from the conduct of a trade or business within such country or possession.

"(B) EXCEPTIONS.—Such term shall not include a tax unless it has substantial application, by its terms and in practice, to—

"(i) persons who are not dual capacity taxpayers, and

"(ii) persons who are citizens or residents of the foreign country or possession.

"(4) LARGE INTEGRATED OIL COMPANY.—For purposes of this subsection, the term 'large integrated oil company' means, with respect to any taxable year, an integrated oil company (as defined in section 291(b)(4)) which—

"(A) had gross receipts in excess of $1,000,000,000 for such taxable year, and

"(B) has an average daily worldwide production of crude oil of at least 500,000 barrels for such taxable year.".

(b) EFFECTIVE DATE.—

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

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

SEC. 112. TERMINATION OF DEDUCTION FOR TERTIARY INJECTANTS.

(a) IN GENERAL.—Section 193 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(d) TERMINATION.—This section shall not apply to any taxable year beginning after the date of the enactment of this subsection.".

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

TITLE II—ENERGY TRUST FUND

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

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

"SEC. 9511. ENERGY TRUST FUND.

"(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Energy Trust Fund', consisting of such amounts as may be appropriated or credited to such Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST.—There are hereby appropriated to the Energy Trust Fund amounts equivalent to the revenues resulting from the amendments made by the title I of the Oil Industry Tax Break Repeal Act of 2009.

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

"(1) to accelerate the use of clean domestic renewable energy resources and alternative fuels;

"(2) to promote the utilization of energy-efficient products and practices and conservation; and

"(3) to increase research, development, and deployment of clean renewable energy and efficiency technologies.".

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

"Sec. 9511. Energy Trust Fund.".

○