

107TH CONGRESS
1ST SESSION

H. R. 805

To amend the Internal Revenue Code of 1986 to enhance domestic oil and gas production.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2001

Mr. THORNBERRY (for himself, Mr. SKEEN, Mr. SMITH of Texas, Mr. WATTS of Oklahoma, Mr. SESSIONS, Mr. STENHOLM, Mr. WATKINS, Mr. BONILLA, Mr. LUCAS of Oklahoma, Mr. MORAN of Kansas, and Mr. COMBEST) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to enhance domestic oil and gas production.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Independent Energy Production Act of 2001”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—MARGINAL WELL PRESERVATION

Sec. 101. Short title; purpose.

Sec. 102. Tax credit for marginal domestic oil and natural gas well production.

Sec. 103. Election to expense geological and geophysical expenditures and delay rental payments.

TITLE II—INDEPENDENT OIL AND GAS PRODUCERS

Sec. 201. 5-year net operating loss carryback for losses attributable to operating mineral interests of independent oil and gas producers.

Sec. 202. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.

Sec. 203. Determination of small refiner exception to oil depletion deduction.

TITLE III—DYED DIESEL FUEL AND KEROSENE OFFERED FOR NONTAXABLE PURPOSES

Sec. 301. Repeal of requirement of certain approved terminals to offer dyed diesel fuel and kerosene for nontaxable purposes.

1 **TITLE I—MARGINAL WELL**
2 **PRESERVATION**

3 **SEC. 101. SHORT TITLE; PURPOSE.**

4 (a) **SHORT TITLE.**—This subtitle may be cited as the
5 “Marginal Well Preservation Act of 2001”.

6 (b) **PURPOSE.**—The purpose of section 102 is to pre-
7 vent the abandonment of marginal oil and gas wells re-
8 sponsible for half of the domestic production of oil and
9 gas in the United States and of section 103 is to recognize
10 that geological and geophysical expenditures and delay
11 rentals are ordinary and necessary business expenses that
12 should be deducted in the year the expense is incurred.

13 **SEC. 102. TAX CREDIT FOR MARGINAL DOMESTIC OIL AND**
14 **NATURAL GAS WELL PRODUCTION.**

15 (a) **IN GENERAL.**—Subpart D of part IV of sub-
16 chapter A of chapter 1 of the Internal Revenue Code of
17 1986 (relating to business credits) is amended by adding
18 at the end the following new section:

1 **“SEC. 45E. CREDIT FOR PRODUCING OIL AND GAS FROM**
2 **MARGINAL WELLS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
4 the marginal well production credit for any taxable year
5 is an amount equal to the product of—

6 “(1) the credit amount, and

7 “(2) the qualified crude oil production and the
8 qualified natural gas production which is attrib-
9 utable to the taxpayer.

10 “(b) CREDIT AMOUNT.—For purposes of this
11 section—

12 “(1) IN GENERAL.—The credit amount is—

13 “(A) \$3 per barrel of qualified crude oil
14 production, and

15 “(B) 50 cents per 1,000 cubic feet of
16 qualified natural gas production.

17 “(2) REDUCTION AS OIL AND GAS PRICES IN-
18 CREASE.—

19 “(A) IN GENERAL.—The \$3 and 50 cents
20 amounts under paragraph (1) shall each be re-
21 duced (but not below zero) by an amount which
22 bears the same ratio to such amount (deter-
23 mined without regard to this paragraph) as—

24 “(i) the excess (if any) of the applica-
25 ble reference price over \$15 (\$1.67 for
26 qualified natural gas production), bears to

1 “(ii) \$3 (\$0.33 for qualified natural
2 gas production).

3 The applicable reference price for a taxable
4 year is the reference price for the calendar year
5 preceding the calendar year in which the tax-
6 able year begins.

7 “(B) INFLATION ADJUSTMENT.—In the
8 case of any taxable year beginning in a calendar
9 year after 2001, each of the dollar amounts
10 contained in subparagraph (A) shall be in-
11 creased to an amount equal to such dollar
12 amount multiplied by the inflation adjustment
13 factor for such calendar year (determined under
14 section 43(b)(3)(B) by substituting ‘2001’ for
15 ‘1990’).

16 “(C) REFERENCE PRICE.—For purposes of
17 this paragraph, the term ‘reference price’
18 means, with respect to any calendar year—

19 “(i) in the case of qualified crude oil
20 production, the reference price determined
21 under section 29(d)(2)(C), and

22 “(ii) in the case of qualified natural
23 gas production, the Secretary’s estimate of
24 the annual average wellhead price per

1 1,000 cubic feet for all domestic natural
2 gas.

3 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
4 PRODUCTION.—For purposes of this section—

5 “(1) IN GENERAL.—The terms ‘qualified crude
6 oil production’ and ‘qualified natural gas production’
7 mean domestic crude oil or natural gas which is pro-
8 duced from a marginal well.

9 “(2) LIMITATION ON AMOUNT OF PRODUCTION
10 WHICH MAY QUALIFY.—

11 “(A) IN GENERAL.—Crude oil or natural
12 gas produced during any taxable year from any
13 well shall not be treated as qualified crude oil
14 production or qualified natural gas production
15 to the extent production from the well during
16 the taxable year exceeds 1,095 barrels or barrel
17 equivalents.

18 “(B) PROPORTIONATE REDUCTIONS.—

19 “(i) SHORT TAXABLE YEARS.—In the
20 case of a short taxable year, the limitations
21 under this paragraph shall be proportion-
22 ately reduced to reflect the ratio which the
23 number of days in such taxable year bears
24 to 365.

1 “(ii) WELLS NOT IN PRODUCTION EN-
2 TIRE YEAR.—In the case of a well which is
3 not capable of production during each day
4 of a taxable year, the limitations under
5 this paragraph applicable to the well shall
6 be proportionately reduced to reflect the
7 ratio which the number of days of produc-
8 tion bears to the total number of days in
9 the taxable year.

10 “(3) DEFINITIONS.—

11 “(A) MARGINAL WELL.—The term ‘mar-
12 ginal well’ means a domestic well—

13 “(i) the production from which during
14 the taxable year is treated as marginal
15 production under section 613A(e)(6), or

16 “(ii) which, during the taxable year—

17 “(I) has average daily production
18 of not more than 25 barrel equiva-
19 lents, and

20 “(II) produces water at a rate
21 not less than 95 percent of total well
22 effluent.

23 “(B) CRUDE OIL, ETC.—The terms ‘crude
24 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have

1 the meanings given such terms by section
2 613A(e).

3 “(C) BARREL EQUIVALENT.—The term
4 ‘barrel equivalent’ means, with respect to nat-
5 ural gas, a conversion ratio of 6,000 cubic feet
6 of natural gas to 1 barrel of crude oil.

7 “(d) OTHER RULES.—

8 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
9 PAYER.—In the case of a marginal well in which
10 there is more than one owner of operating interests
11 in the well and the crude oil or natural gas produc-
12 tion exceeds the limitation under subsection (c)(2),
13 qualifying crude oil production or qualifying natural
14 gas production attributable to the taxpayer shall be
15 determined on the basis of the ratio which tax-
16 payer’s revenue interest in the production bears to
17 the aggregate to the revenue interests of all oper-
18 ating interest owners in the production.

19 “(2) OPERATING INTEREST REQUIRED.—Any
20 credit under this section may be claimed only on
21 production which is attributable to the holder of an
22 operating interest.

23 “(3) PRODUCTION FROM NONCONVENTIONAL
24 SOURCES EXCLUDED.—In the case of production
25 from a marginal well which is eligible for the credit

1 allowed under section 29 for the taxable year, no
2 credit shall be allowable under this section unless
3 the taxpayer elects not to claim credit under section
4 29 with respect to the well.”.

5 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
6 tion 38(b) of such Code is amended by striking “plus”
7 at the end of paragraph (12), by striking the period at
8 the end of paragraph (13) and inserting”, plus”, and by
9 adding at the end of the following new paragraph:

10 “(14) the marginal oil and gas well production
11 credit determined under section 45E(a).”.

12 (c) CREDIT ALLOWED AGAINST REGULAR AND MIN-
13 IMUM TAX.—

14 (1) IN GENERAL.—Subsection (c) of section 38
15 of such Code (relating to limitation based on amount
16 of tax) is amended by redesignating paragraph (3)
17 as paragraph (4) and by inserting after paragraph
18 (2) the following new paragraph:

19 “(3) SPECIAL RULES FOR MARGINAL OIL AND
20 GAS WELL PRODUCTION CREDIT.—

21 “(A) IN GENERAL.—In the case of the
22 marginal oil and gas well production credit—

23 “(i) this section and section 39 shall
24 be applied separately with respect to the
25 credit, and

1 “(ii) in applying paragraph (1) to the
2 credit—

3 “(I) subparagraphs (A) and (B)
4 thereof shall not apply, and

5 “(II) the limitation under para-
6 graph (1) (as modified by subclause
7 (I)) shall be reduced by the credit al-
8 lowed under subsection (a) for the
9 taxable year (other than the marginal
10 oil and gas well production credit).

11 “(B) MARGINAL OIL AND GAS WELL PRO-
12 DUCION CREDIT.—For purposes of this sub-
13 section, the term ‘marginal oil and gas well pro-
14 duction credit’ means the credit allowable under
15 subsection (a) by reason of section 45E(a).”.

16 (2) CONFORMING AMENDMENT.—Subclause (II)
17 of section 38(c)(2)(A)(ii) of such Code is amended
18 by inserting “or the marginal oil and gas well pro-
19 duction credit” after “employment credit”.

20 (d) CARRYBACK.—Subsection (a) of section 39 of
21 such Code (relating to carryback and carryforward of un-
22 used credits generally) is amended by adding at the end
23 the following new paragraph:

1 “(3) 10-YEAR CARRYBACK FOR MARGINAL OIL
2 AND GAS WELL PRODUCTION CREDIT.—In the case
3 of the marginal oil and gas well production credit—

4 “(A) this section shall be applied sepa-
5 rately from the business credit (other than the
6 marginal oil and gas well production credit),

7 “(B) paragraph (1) shall be applied by
8 substituting ‘10 taxable year’ for ‘1 taxable
9 year’ in subparagraph (A) thereof, and

10 “(C) paragraph (2) shall be applied—

11 “(i) by substituting ‘31 taxable years’
12 for ‘21 taxable years’ in subparagraph (A)
13 thereof, and

14 “(ii) by substituting ‘30 taxable years’
15 for ‘20 taxable years’ in subparagraph (B)
16 thereof.”.

17 (e) COORDINATION WITH SECTION 29.—Section
18 29(a) of such Code is amended by striking “There” and
19 inserting “At the election of the taxpayer, there.”

20 (f) CLERICAL AMENDMENT.—The table of sections
21 for subpart D of part IV of subchapter A of chapter 1
22 of such Code is amended by adding at the end the fol-
23 lowing item:

 “Sec. 45E. Credit for producing oil and gas from marginal
 wells.”.

1 (g) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to production in taxable years be-
3 ginning after December 31, 2000.

4 **SEC. 103. ELECTION TO EXPENSE GEOLOGICAL AND GEO-**
5 **PHYSICAL EXPENDITURES AND DELAY RENT-**
6 **AL PAYMENTS.**

7 (a) GEOLOGICAL AND GEOPHYSICAL EXPENDITURES
8 FOR OIL AND GAS WELLS.—

9 (1) IN GENERAL.—Section 263 of the Internal
10 Revenue Code of 1986 (relating to capital expendi-
11 tures) is amended by adding at the end the following
12 new subsection:

13 “(j) GEOLOGICAL AND GEOPHYSICAL EXPENDI-
14 TURES FOR OIL AND GAS WELLS.—Notwithstanding sub-
15 section (a), a taxpayer may elect to treat geological and
16 geophysical expenses incurred in connection with the ex-
17 ploration for, or development of, oil or gas as expenses
18 which are not chargeable to capital account. Any expenses
19 so treated shall be allowed as a deduction in the taxable
20 year in which paid or incurred.”.

21 (2) CONFORMING AMENDMENT.—Section
22 263A(c)(3) of such Code is amended by inserting
23 “263(j),” after “263(i),”.

24 (3) EFFECTIVE DATE.—

1 (A) IN GENERAL.—The amendments made
2 by this subsection shall apply to expenses paid
3 or incurred after the date of the enactment of
4 this Act.

5 (B) TRANSITION RULE.—In the case of
6 any expenses described in section 263(j) of the
7 Internal Revenue Code of 1986, as added by
8 this subsection, which were paid or incurred on
9 or before the date of the enactment of this Act,
10 the taxpayer may elect, at such time and in
11 such manner as the Secretary of the Treasury
12 may prescribe, to amortize the suspended por-
13 tion of such expenses over the 36-month period
14 beginning with the month in which the date of
15 the enactment of this Act occurs. For purposes
16 of this subparagraph, the suspended portion of
17 any expense is that portion of such expense
18 which, as of the first day of the 36-month pe-
19 riod, has not been included in the cost of a
20 property or otherwise deducted.

21 (b) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL
22 AND GAS WELLS.—

23 (1) IN GENERAL.—Section 263 of such Code
24 (relating to capital expenditures), as amended by

1 subsection (a)(1), is amended by adding at the end
2 the following new subsection:

3 “(k) DELAY RENTAL PAYMENTS FOR DOMESTIC OIL
4 AND GAS WELLS.—

5 “(1) IN GENERAL.—Notwithstanding subsection
6 (a), a taxpayer may elect to treat delay rental pay-
7 ments incurred in connection with the development
8 of oil or gas within the United States (as defined in
9 section 638) as payments which are not chargeable
10 to capital account. Any payments so treated shall be
11 allowed as a deduction in the taxable year in which
12 paid or incurred.

13 “(2) DELAY RENTAL PAYMENTS.—For purposes
14 of paragraph (1), the term ‘delay rental payment’
15 means an amount paid for the privilege of deferring
16 the drilling of an oil or gas well under an oil or gas
17 lease.”.

18 (2) CONFORMING AMENDMENT.—Section
19 263A(c)(3) of such Code, as amended by subsection
20 (a)(2), is amended by inserting “263(k),” after
21 “263(j),”.

22 (3) EFFECTIVE DATE.—

23 (A) IN GENERAL.—The amendments made
24 by this subsection shall apply to payments made

1 or incurred after the date of the enactment of
2 this Act.

3 (B) TRANSITION RULE.—In the case of
4 any payments described in section 263(k) of the
5 Internal Revenue Code of 1986, as added by
6 this subsection, which were made or incurred on
7 or before the date of the enactment of this Act,
8 the taxpayer may elect, at such time and in
9 such manner as the Secretary of the Treasury
10 may prescribe, to amortize the suspended por-
11 tion of such payments over the 36-month period
12 beginning with the month in which the date of
13 the enactment of this Act occurs. For purposes
14 of this subparagraph, the suspended portion of
15 any payment is that portion of such payment
16 which, as of the first day of the 36-month pe-
17 riod, has not been included in the cost of a
18 property or otherwise deducted.

1 **TITLE II—INDEPENDENT OIL**
2 **AND GAS PRODUCERS**

3 **SEC. 201. 5-YEAR NET OPERATING LOSS CARRYBACK FOR**
4 **LOSSES ATTRIBUTABLE TO OPERATING MIN-**
5 **ERAL INTERESTS OF INDEPENDENT OIL AND**
6 **GAS PRODUCERS.**

7 (a) IN GENERAL.—Paragraph (1) of section 172(b)
8 of the Internal Revenue Code of 1986 (relating to years
9 to which loss may be carried) is amended by adding at
10 the end the following new subparagraph:

11 “(H) LOSSES ON OPERATING MINERAL IN-
12 TERESTS OF INDEPENDENT OIL AND GAS PRO-
13 DUCERS.—In the case of a taxpayer—

14 “(i) which has an eligible oil and gas
15 loss (as defined in subsection (j)) for a tax-
16 able year, and

17 “(ii) which is not an integrated oil
18 company (as defined in section 291(b)(4)),
19 such eligible oil and gas loss shall be a net
20 operating loss carryback to each of the 5
21 taxable years preceding the taxable year of
22 such loss.”.

23 (b) ELIGIBLE OIL AND GAS LOSS.—Section 172 of
24 such Code is amended by redesignating subsection (j) as

1 subsection (k) and by inserting after subsection (i) the fol-
2 lowing new subsection:

3 “(j) ELIGIBLE OIL AND GAS LOSS.—For purposes of
4 this section—

5 “(1) IN GENERAL.—The term ‘eligible oil and
6 gas loss’ means the lesser of—

7 “(A) the amount which would be the net
8 operating loss for the taxable year if only in-
9 come and deductions attributable to operating
10 mineral interests (as defined in section 614(d))
11 in oil and gas wells are taken into account, or

12 “(B) the amount of the net operating loss
13 for such taxable year.

14 “(2) COORDINATION WITH SUBSECTION
15 (b)(2).—For purposes of applying subsection (b)(2),
16 an eligible oil and gas loss for any taxable year shall
17 be treated in a manner similar to the manner in
18 which a specified liability loss is treated.

19 “(3) ELECTION.—Any taxpayer entitled to a 5-
20 year carryback under subsection (b)(1)(H) from any
21 loss year may elect to have the carryback period
22 with respect to such loss year determined without re-
23 gard to subsection (b)(1)(H).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to net operating losses for taxable
3 years beginning after December 31, 2000.

4 **SEC. 202. TEMPORARY SUSPENSION OF LIMITATION BASED**
5 **ON 65 PERCENT OF TAXABLE INCOME AND**
6 **EXTENSION OF SUSPENSION OF TAXABLE IN-**
7 **COME LIMIT WITH RESPECT TO MARGINAL**
8 **PRODUCTION.**

9 (a) LIMITATION BASED ON 65 PERCENT OF TAX-
10 ABLE INCOME.—Subsection (d) of section 613A of the In-
11 ternal Revenue Code of 1986 (relating to limitation on
12 percentage depletion in case of oil and gas wells) is amend-
13 ed by adding at the end the following new paragraph:

14 “(6) TEMPORARY SUSPENSION OF TAXABLE IN-
15 COME LIMIT.—Paragraph (1) shall not apply to tax-
16 able years beginning after December 31, 2000, and
17 before January 1, 2007, including with respect to
18 amounts carried under the second sentence of para-
19 graph (1) to such taxable years.”.

20 (b) EXTENSION OF SUSPENSION OF TAXABLE IN-
21 COME LIMIT WITH RESPECT TO MARGINAL PRODUC-
22 TION.—Subparagraph (H) of section 613A(c)(6) of such
23 Code (relating to temporary suspension of taxable income
24 limit with respect to marginal production) is amended by
25 striking “2002” and inserting “2007”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to taxable years beginning after
3 December 31, 2000.

4 **SEC. 203. DETERMINATION OF SMALL REFINER EXCEPTION**
5 **TO OIL DEPLETION DEDUCTION.**

6 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
7 of the Internal Revenue Code (relating to certain refiners
8 excluded) is amended to read as follows:

9 “(4) CERTAIN REFINERS EXCLUDED.—If the
10 taxpayer or a related person engages in the refining
11 of crude oil, subsection (c) shall not apply to the
12 taxpayer for a taxable year if the average daily refin-
13 ery runs of the taxpayer and the related person for
14 the taxable year exceed 50,000 barrels. For purposes
15 of this paragraph, the average daily refinery runs for
16 any taxable year shall be determined by dividing the
17 aggregate refinery runs for the taxable year by the
18 number of days in the taxable year.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2000.

1 **TITLE III—DYED DIESEL FUEL**
2 **AND KEROSENE OFFERED**
3 **FOR NONTAXABLE PURPOSES**

4 **SEC. 301. REPEAL OF REQUIREMENT OF CERTAIN AP-**
5 **PROVED TERMINALS TO OFFER DYED DIESEL**
6 **FUEL AND KEROSENE FOR NONTAXABLE**
7 **PURPOSES.**

8 Section 4101 of the Internal Revenue Code of 1986
9 (relating to certain approved terminals of registered per-
10 sons required to offer dyed diesel fuel and kerosene for
11 nontaxable purposes) is amended by striking subsection
12 (e).

○