

109TH CONGRESS
2D SESSION

S. 2670

To restore fairness in the provision of incentives for oil and gas production,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2006

Mr. REID (for Mr. KERRY (for himself, Mr. KOHL, and Mr. LIEBERMAN)) in-
troduced the following bill; which was read twice and referred to the Com-
mittee on Finance

A BILL

To restore fairness in the provision of incentives for oil
and gas production, 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; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Energy Fairness for America Act”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for
 4 this Act is as follows:

- Sec. 1. Short title; etc.
- Sec. 2. Termination of deduction for intangible drilling and development costs.
- Sec. 3. Termination of percentage depletion allowance for oil and gas wells.
- Sec. 4. Termination of enhanced oil recovery credit.
- Sec. 5. Termination of certain provisions of the Energy Policy Act of 2005.
- Sec. 6. Termination of certain tax provisions of the Energy Policy Act of 2005.
- Sec. 7. Revaluation of LIFO inventories of large integrated oil companies.
- Sec. 8. Modifications of foreign tax credit rules applicable to dual capacity tax-
 payers.
- Sec. 9. Rules relating to foreign oil and gas income.
- Sec. 10. Elimination of deferral for foreign oil and gas extraction income.

5 **SEC. 2. TERMINATION OF DEDUCTION FOR INTANGIBLE**
 6 **DRILLING AND DEVELOPMENT COSTS.**

7 (a) IN GENERAL.—Section 263(c) is amended by
 8 adding at the end the following new sentence: “This sub-
 9 section shall not apply to any taxable year beginning after
 10 the date of the enactment of this sentence.”.

11 (b) CONFORMING AMENDMENTS.—Paragraphs (2)
 12 and (3) of section 291(b) are each amended by striking
 13 “section 263(c), 616(a),” and inserting “section 616(a)”.

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

17 **SEC. 3. TERMINATION OF PERCENTAGE DEPLETION AL-**
 18 **LOWANCE FOR OIL AND GAS WELLS.**

19 (a) IN GENERAL.—Section 613A is amended by add-
 20 ing at the end the following new subsection:

1 (2) Section 343 (relating to marginal property
2 production incentives).

3 (3) Section 344 (relating to incentives for nat-
4 ural gas production from deep wells in the shallow
5 waters of the Gulf of Mexico).

6 (4) Section 345 (relating to royalty relief for
7 deep water production).

8 (5) Section 357 (relating to comprehensive in-
9 ventory of OCS oil and natural gas resources).

10 (6) Subtitle J of title IX (relating to ultra-deep-
11 water and unconventional natural gas and other pe-
12 troleum resources).

13 (b) **TERMINATION OF ALASKA OFFSHORE ROYALTY**
14 **SUSPENSION.—**

15 (1) **IN GENERAL.—**Section 8(a)(3)(B) of the
16 Outer Continental Shelf Lands Act (43 U.S.C.
17 1337(a)(3)(B)) is amended by striking “and in the
18 Planning Areas offshore Alaska”.

19 (2) **EFFECTIVE DATE.—**The amendment made
20 by this subsection shall take effect on and after the
21 date of the enactment of this Act.

22 **SEC. 6. TERMINATION OF CERTAIN TAX PROVISIONS OF**
23 **THE ENERGY POLICY ACT OF 2005.**

24 (a) **ELECTRIC TRANSMISSION PROPERTY TREATED**
25 **AS 15-YEAR PROPERTY.—**Section 168(e)(3)(E)(vii) is

1 amended by inserting “, and before the date of the enact-
2 ment of the Energy Fairness for America Act” after
3 “April 11, 2005”.

4 (b) TEMPORARY EXPENSING OF EQUIPMENT USED
5 IN REFINING LIQUID FUELS.—Section 179C(c)(1) is
6 amended—

7 (1) by striking “January 1, 2012” and insert-
8 ing “the date of the enactment of the Energy Fair-
9 ness for America Act”, and

10 (2) by striking “January 1, 2008” and insert-
11 ing “the date of the enactment of the Energy Fair-
12 ness for America Act”.

13 (c) NATURAL GAS DISTRIBUTION LINES TREATED
14 AS 15-YEAR PROPERTY.—Section 168(e)(3)(E)(viii) is
15 amended by striking “January 1, 2011” and inserting
16 “the date of the enactment of the Energy Fairness for
17 America Act”.

18 (d) NATURAL GAS GATHERING LINES TREATED AS
19 7-YEAR PROPERTY.—Section 168(e)(3)(C)(iv) is amended
20 by inserting “, and before the date of the enactment of
21 the Energy Fairness for America Act” after “April 11,
22 2005”.

23 (e) DETERMINATION OF SMALL REFINER EXCEP-
24 TION TO OIL DEPLETION DEDUCTION.—Section 1328(b)
25 of the Energy Policy Act of 2005 is amended by inserting

1 “and beginning before the date of the enactment of the
2 Energy Fairness for America Act” after “this Act”.

3 (f) AMORTIZATION OF GEOLOGICAL AND GEO-
4 PHYSICAL EXPENDITURES.—Section 167(h) is amended
5 by adding at the end the following new paragraph:

6 “(5) TERMINATION.—This subsection shall not
7 apply to any taxable year beginning after the date
8 of the enactment of the Energy Fairness for Amer-
9 ica Act.”.

10 (g) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on and after the date of the
12 enactment of this Act.

13 **SEC. 7. REVALUATION OF LIFO INVENTORIES OF LARGE IN-**
14 **TEGRATED OIL COMPANIES.**

15 (a) GENERAL RULE.—Notwithstanding any other
16 provision of law, if a taxpayer is an applicable integrated
17 oil company for its last taxable year ending in calendar
18 year 2005, the taxpayer shall—

19 (1) increase, effective as of the close of such
20 taxable year, the value of each historic LIFO layer
21 of inventories of crude oil, natural gas, or any other
22 petroleum product (within the meaning of section
23 4611) by the layer adjustment amount, and

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

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

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

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

13 (A) \$18.75, and

14 (B) the number of barrels of crude oil (or
15 in the case of natural gas or other petroleum
16 products, the number of barrel-of-oil equiva-
17 lents) represented by the layer.

18 (2) BARREL-OF-OIL EQUIVALENT.—The term
19 “barrel-of-oil equivalent” has the meaning given
20 such term by section 29(d)(5) (as in effect before its
21 redesignation by the Energy Tax Incentives Act of
22 2005).

23 (c) APPLICATION OF REQUIREMENT.—

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

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

12 (d) APPLICABLE INTEGRATED OIL COMPANY.—For
13 purposes of this section, the term “applicable integrated
14 oil company” means an integrated oil company (as defined
15 in section 291(b)(4) of the Internal Revenue Code of
16 1986) which has an average daily worldwide production
17 of crude oil of at least 500,000 barrels for the taxable
18 year and which had gross receipts in excess of
19 \$1,000,000,000 for its last taxable year ending during cal-
20 endar year 2005. For purposes of this subsection all per-
21 sons treated as a single employer under subsections (a)
22 and (b) of section 52 of the Internal Revenue Code of
23 1986 shall be treated as 1 person and, in the case of a
24 short taxable year, the rule under section 448(c)(3)(B)
25 shall apply.

1 **SEC. 8. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
2 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

3 (a) IN GENERAL.—Section 901 (relating to credit for
4 taxes of foreign countries and of possessions of the United
5 States) is amended by redesignating subsection (m) as
6 subsection (n) and by inserting after subsection (l) the fol-
7 lowing new subsection:

8 “(m) SPECIAL RULES RELATING TO DUAL CAPACITY
9 TAXPAYERS.—

10 “(1) GENERAL RULE.—Notwithstanding any
11 other provision of this chapter, any amount paid or
12 accrued by a dual capacity taxpayer to a foreign
13 country or possession of the United States for any
14 period shall not be considered a tax—

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

18 “(B) to the extent such amount exceeds
19 the amount (determined in accordance with reg-
20 ulations) which—

21 “(i) is paid by such dual capacity tax-
22 payer pursuant to the generally applicable
23 income tax imposed by the country or pos-
24 session, or

25 “(ii) would be paid if the generally ap-
26 plicable income tax imposed by the country

1 or possession were applicable to such dual
2 capacity taxpayer.

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

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

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

13 “(B) receives (or will receive) directly or
14 indirectly a specific economic benefit (as deter-
15 mined in accordance with regulations) from
16 such country or possession.

17 “(3) GENERALLY APPLICABLE INCOME TAX.—
18 For purposes of this subsection—

19 “(A) IN GENERAL.—The term ‘generally
20 applicable income tax’ means an income tax (or
21 a series of income taxes) which is generally im-
22 posed under the laws of a foreign country or
23 possession on income derived from the conduct
24 of a trade or business within such country or
25 possession.

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

4 “(i) persons who are not dual capacity
5 taxpayers, and

6 “(ii) persons who are citizens or resi-
7 dents of the foreign country or posses-
8 sion.”

9 (b) EFFECTIVE DATE.—

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

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

18 **SEC. 9. RULES RELATING TO FOREIGN OIL AND GAS IN-**
19 **COME.**

20 (a) SEPARATE BASKET FOR FOREIGN TAX CRED-
21 IT.—

22 (1) YEARS BEFORE 2007.—Paragraph (1) of
23 section 904(d) (relating to separate application of
24 section with respect to certain categories of income),
25 as in effect for years beginning before 2007, is

1 amended by striking “and” at the end of subpara-
2 graph (H), by redesignating subparagraph (I) as
3 subparagraph (J), and by inserting after subpara-
4 graph (H) the following new subparagraph:

5 “(I) foreign oil and gas income, and”.

6 (2) 2007 AND AFTER.—Paragraph (1) of sec-
7 tion 904(d), as in effect for years beginning after
8 2006, is amended by striking “and” at the end of
9 subparagraph (A), by striking the period at the end
10 of subparagraph (B) and inserting “, and”, and by
11 adding at the end the following:

12 “(C) foreign oil and gas income.”

13 (b) DEFINITION.—

14 (1) YEARS BEFORE 2007.—Paragraph (2) of
15 section 904(d), as in effect for years beginning be-
16 fore 2007, is amended by redesignating subpara-
17 graphs (H) and (I) as subparagraphs (I) and (J),
18 respectively, and by inserting after subparagraph
19 (G) the following new subparagraph:

20 “(H) FOREIGN OIL AND GAS INCOME.—

21 The term ‘foreign oil and gas income’ has the
22 meaning given such term by section 954(g).”

23 (2) 2007 AND AFTER.—Section 904(d)(2), as in
24 effect for years after 2006, is amended by redesi-
25 gnating subparagraphs (J) and (K) as subparagraphs

1 (K) and (L) and by inserting after subparagraph (I)
 2 the following:

3 “(J) FOREIGN OIL AND GAS INCOME.—For
 4 purposes of this section—

5 “(i) IN GENERAL.—The term ‘foreign
 6 oil and gas income’ has the meaning given
 7 such term by section 954(g).

8 “(ii) COORDINATION.—Passive cat-
 9 egory income and general category income
 10 shall not include foreign oil and gas income
 11 (as so defined).”

12 (c) CONFORMING AMENDMENTS.—

13 (1) Section 904(d)(3)(F)(i) is amended by
 14 striking “or (E)” and inserting “(E), or (I)”.

15 (2) Section 907(a) is hereby repealed.

16 (3) Section 907(c)(4) is hereby repealed.

17 (4) Section 907(f) is hereby repealed.

18 (d) EFFECTIVE DATES.—

19 (1) IN GENERAL.—The amendments made by
 20 this section shall apply to taxable years beginning
 21 after the date of the enactment of this Act.

22 (2) YEARS AFTER 2006.—The amendments
 23 made by paragraphs (1)(B) and (2)(B) shall apply
 24 to taxable years beginning after December 31, 2006.

25 (3) TRANSITIONAL RULES.—

1 (A) SEPARATE BASKET TREATMENT.—Any
2 taxes paid or accrued in a taxable year begin-
3 ning on or before the date of the enactment of
4 this Act, with respect to income which was de-
5 scribed in subparagraph (I) of section
6 904(d)(1) of such Code (as in effect on the day
7 before the date of the enactment of this Act),
8 shall be treated as taxes paid or accrued with
9 respect to foreign oil and gas income to the ex-
10 tent the taxpayer establishes to the satisfaction
11 of the Secretary of the Treasury that such
12 taxes were paid or accrued with respect to for-
13 eign oil and gas income.

14 (B) CARRYOVERS.—Any unused oil and
15 gas extraction taxes which under section 907(f)
16 of such Code (as so in effect) would have been
17 allowable as a carryover to the taxpayer's first
18 taxable year beginning after the date of the en-
19 actment of this Act (without regard to the limi-
20 tation of paragraph (2) of such section 907(f)
21 for first taxable year) shall be allowed as
22 carryovers under section 904(c) of such Code in
23 the same manner as if such taxes were unused
24 taxes under such section 904(c) with respect to
25 foreign oil and gas extraction income.

1 (C) LOSSES.—The amendment made by
2 subsection (c)(3) shall not apply to foreign oil
3 and gas extraction losses arising in taxable
4 years beginning on or before the date of the en-
5 actment of this Act.

6 **SEC. 10. ELIMINATION OF DEFERRAL FOR FOREIGN OIL**
7 **AND GAS EXTRACTION INCOME.**

8 (a) GENERAL RULE.—Paragraph (1) of section
9 954(g) (defining foreign base company oil related income)
10 is amended to read as follows:

11 “(1) IN GENERAL.—Except as otherwise pro-
12 vided in this subsection, the term ‘foreign oil and
13 gas income’ means any income of a kind which
14 would be taken into account in determining the
15 amount of—

16 “(A) foreign oil and gas extraction income
17 (as defined in section 907(c)), or

18 “(B) foreign oil related income (as defined
19 in section 907(c)).”

20 (b) CONFORMING AMENDMENTS.—

21 (1) Subsections (a)(5), (b)(5), and (b)(6) of
22 section 954, and section 952(c)(1)(B)(ii)(I), are each
23 amended by striking “base company oil related in-
24 come” each place it appears (including in the head-

1 ing of subsection (b)(8)) and inserting “oil and gas
2 income”.

3 (2) Subsection (b)(4) of section 954 is amended
4 by striking “base company oil-related income” and
5 inserting “oil and gas income”.

6 (3) The subsection heading for subsection (g) of
7 section 954 is amended by striking “FOREIGN BASE
8 COMPANY OIL RELATED INCOME” and inserting
9 “FOREIGN OIL AND GAS INCOME”.

10 (4) Subparagraph (A) of section 954(g)(2) is
11 amended by striking “foreign base company oil re-
12 lated income” and inserting “foreign oil and gas in-
13 come”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years of foreign corpora-
16 tions beginning after the date of the enactment of this
17 Act, and to taxable years of United States shareholders
18 ending with or within such taxable years of foreign cor-
19 porations.

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