

112TH CONGRESS  
1ST SESSION

# H. R. 1889

To amend the Internal Revenue Code of 1986 to suspend the excise tax on highway motor fuels, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2011

Mr. SHULER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to suspend the excise tax on highway motor fuels, 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 “Gas Tax Holiday Act”.

5 **SEC. 2. SUSPENSION OF FUEL TAXES ON HIGHWAY MOTOR**  
6 **FUELS.**

7 (a) IN GENERAL.—Section 4081 of the Internal Rev-  
8 enue Code of 1986 (relating to imposition of tax on motor  
9 and aviation fuels) is amended by adding at the end the  
10 following new subsection:

1       “(f) SUSPENSION OF HIGHWAY MOTOR FUEL  
2 TAXES.—

3           “(1) IN GENERAL.—During the suspension pe-  
4       riod, the tax imposed by section 4041 or 4081 on  
5       highway motor fuel shall be suspended.

6           “(2) DEFINITIONS.—For purposes of this sub-  
7       section—

8           “(A) SUSPENSION PERIOD.—The term  
9       ‘suspension period’ means the 45-day period be-  
10      ginning 7 days after the date of enactment of  
11      this subsection.

12          “(B) HIGHWAY MOTOR FUEL.—The term  
13      ‘highway motor fuel’ means any fuel subject to  
14      tax under section 4041 or 4081 other than  
15      aviation gasoline and aviation-grade kerosene.”.

16      (b) MAINTENANCE OF TRUST FUNDS DEPOSITS;  
17 AMOUNTS APPROPRIATED TO TRUST FUNDS TREATED AS  
18 TAXES.—

19          (1) IN GENERAL.—There is hereby appro-  
20      priated (out of any money in the Treasury not other-  
21      wise appropriated) to each trust fund which would  
22      (but for this subsection) receive reduced revenues as  
23      a result of a suspension in a rate of tax by reason  
24      of section 4081(f)(1) of the Internal Revenue Code  
25      of 1986 (as added by this section) an amount equal

1 to such reduction in revenues. Amounts appropriated  
2 by the preceding sentence to any trust fund—

3 (A) shall be transferred from the general  
4 fund at such times and in such manner as to  
5 replicate to the extent possible the transfers  
6 which would have occurred had subsection (a)  
7 not been enacted, and

8 (B) shall be treated for all purposes of  
9 Federal law as taxes received under the appro-  
10 priate section referred to in such section  
11 4081(f)(1).

12 (2) MITIGATION OF POTENTIAL IMPACT ON  
13 TRUST FUNDS.—Appropriations by paragraph (1)  
14 shall include such amounts as are necessary to miti-  
15 gate potential impacts on such trust funds due to in-  
16 ccurring costs associated with such reduction in reve-  
17 nues.

18 (c) CONSUMERS TO BENEFIT FROM SUSPENSION.—  
19 It is the sense of Congress that consumers should imme-  
20 diately receive the benefit of the 18.4 cents per gallon tax  
21 reduction by reason of the amendment made by section  
22 (a).

23 (d) EFFECTIVE DATE.—The amendment made by  
24 this section shall take effect on the date of the enactment  
25 of this Act.

1 (e) FLOOR STOCK REFUNDS.—

2 (1) IN GENERAL.—If—

3 (A) before the tax suspension date, tax has  
4 been imposed under section 4081 of the Inter-  
5 nal Revenue Code of 1986 on any highway  
6 motor fuel, and

7 (B) on such date such fuel is held by a  
8 dealer and has not been used and is intended  
9 for sale,

10 there shall be credited or refunded (without interest)  
11 to the person who paid such tax (hereafter in this  
12 subsection referred to as the “taxpayer”) an amount  
13 equal to the excess of the tax paid by the taxpayer  
14 over the tax which would be imposed on such fuel  
15 had the taxable event occurred on such date.

16 (2) TIME FOR FILING CLAIMS.—No credit or re-  
17 fund shall be allowed or made under this subsection  
18 unless—

19 (A) claim therefor is filed with the Sec-  
20 retary of the Treasury before the date which is  
21 6 months after the tax suspension date based  
22 on a request submitted to the taxpayer before  
23 the date which is 3 months after the tax sus-  
24 pension date by the dealer who held the high-  
25 way motor fuel on such date, and

1           (B) the taxpayer has repaid or agreed to  
2           repay the amount so claimed to such dealer or  
3           has obtained the written consent of such dealer  
4           to the allowance of the credit or the making of  
5           the refund.

6           (3) EXCEPTION FOR FUEL HELD IN RETAIL  
7           STOCKS.—No credit or refund shall be allowed under  
8           this subsection with respect to any highway motor  
9           fuel in retail stocks held at the place where intended  
10          to be sold at retail.

11          (4) DEFINITIONS.—For purposes of this sub-  
12          section—

13                (A) TAX SUSPENSION DATE.—The term  
14                “tax suspension date” means the first day of  
15                any suspension period in effect under section  
16                4081(f) of the Internal Revenue Code of 1986  
17                (as added by subsection (a) of this section).

18                (B) OTHER TERMS.—The terms “dealer”  
19                and “held by a dealer” have the respective  
20                meanings given to such terms by section 6412  
21                of such Code.

22          (5) CERTAIN RULES TO APPLY.—Rules similar  
23          to the rules of subsections (b) and (c) of section  
24          6412 of such Code shall apply for purposes of this  
25          subsection.

1 (f) FLOOR STOCKS TAX.—

2 (1) IMPOSITION OF TAX.—In the case of any  
3 highway motor fuel which is held on the tax restora-  
4 tion date by any person, there is hereby imposed a  
5 floor stocks tax equal to the excess of the tax which  
6 would be imposed on such fuel had the taxable event  
7 occurred on such date over the tax (if any) pre-  
8 viously paid (and not credited or refunded) on such  
9 fuel.

10 (2) LIABILITY FOR TAX AND METHOD OF PAY-  
11 MENT.—

12 (A) LIABILITY FOR TAX.—The person  
13 holding highway motor fuel on the tax restora-  
14 tion date to which the tax imposed by para-  
15 graph (1) applies shall be liable for such tax.

16 (B) METHOD OF PAYMENT.—The tax im-  
17 posed by paragraph (1) shall be paid in such  
18 manner as the Secretary shall prescribe.

19 (C) TIME FOR PAYMENT.—The tax im-  
20 posed by paragraph (1) shall be paid on or be-  
21 fore the 45th day after the tax restoration date.

22 (3) DEFINITIONS.—For purposes of this sub-  
23 section—

24 (A) TAX RESTORATION DATE.—The term  
25 “tax restoration date” means the first day after

1 the end of the suspension period (as defined in  
2 section 4081(f) of the Internal Revenue Code of  
3 1986).

4 (B) HIGHWAY MOTOR FUEL.—The term  
5 “highway motor fuel” has the meaning given to  
6 such term by section 4081(f) of such Code.

7 (C) HELD BY A PERSON.—A highway  
8 motor fuel shall be considered as held by a per-  
9 son if title thereto has passed to such person  
10 (whether or not delivery to the person has been  
11 made).

12 (D) SECRETARY.—The term “Secretary”  
13 means the Secretary of the Treasury or the  
14 Secretary’s delegate.

15 (4) EXCEPTION FOR EXEMPT USES.—The tax  
16 imposed by paragraph (1) shall not apply to any  
17 highway motor fuel held by any person exclusively  
18 for any use to the extent a credit or refund of the  
19 tax is allowable for such use.

20 (5) EXCEPTION FOR CERTAIN AMOUNTS OF  
21 FUEL.—

22 (A) IN GENERAL.—No tax shall be im-  
23 posed by paragraph (1) on any highway motor  
24 fuel held on the tax restoration date by any per-  
25 son if the aggregate amount of such highway

1 motor fuel held by such person on such date  
2 does not exceed 2,000 gallons. The preceding  
3 sentence shall apply only if such person submits  
4 to the Secretary (at the time and in the manner  
5 required by the Secretary) such information as  
6 the Secretary shall require for purposes of this  
7 subparagraph.

8 (B) EXEMPT FUEL.—For purposes of sub-  
9 paragraph (A), there shall not be taken into ac-  
10 count any highway motor fuel held by any per-  
11 son which is exempt from the tax imposed by  
12 paragraph (1) by reason of paragraph (4).

13 (C) CONTROLLED GROUPS.—For purposes  
14 of this subsection—

15 (i) CORPORATIONS.—

16 (I) IN GENERAL.—All persons  
17 treated as a controlled group shall be  
18 treated as 1 person.

19 (II) CONTROLLED GROUP.—The  
20 term “controlled group” has the  
21 meaning given to such term by sub-  
22 section (a) of section 1563 of such  
23 Code; except that for such purposes  
24 the phrase “more than 50 percent”  
25 shall be substituted for the phrase “at



1           least 80 percent” each place it ap-  
2           pears in such subsection.

3           (ii) NONINCORPORATED PERSONS  
4           UNDER COMMON CONTROL.—Under regula-  
5           tions prescribed by the Secretary, prin-  
6           ciples similar to the principles of subpara-  
7           graph (A) shall apply to a group of per-  
8           sons under common control if 1 or more of  
9           such persons is not a corporation.

10           (6) OTHER LAWS APPLICABLE.—All provisions  
11           of law, including penalties, applicable with respect to  
12           the taxes imposed by section 4081 of such Code  
13           shall, insofar as applicable and not inconsistent with  
14           the provisions of this subsection, apply with respect  
15           to the floor stock taxes imposed by paragraph (1) to  
16           the same extent as if such taxes were imposed by  
17           such section.

18 **SEC. 3. DENIAL OF TAX BENEFITS TO CERTAIN OIL AND**  
19 **GAS COMPANIES.**

20           (a) AMORTIZATION OF GEOLOGICAL AND GEO-  
21           PHYSICAL EXPENDITURES.—

22           (1) IN GENERAL.—Subparagraph (A) of section  
23           167(h)(5) of the Internal Revenue Code of 1986 is  
24           amended by inserting “(and for the 1-year period  
25           beginning on the date of enactment of the Gas Tax

1 Holiday Act, any company which is not a small,  
2 independent oil and gas company)” after “major in-  
3 tegrated oil company,”.

4 (2) CONFORMING AMENDMENT.—The heading  
5 for paragraph (5) of section 167(h) of such Code is  
6 amended by inserting “AND OTHER LARGE TAX-  
7 PAYERS”.

8 (3) EFFECTIVE DATE.—The amendments made  
9 by this subsection shall apply to amounts paid or in-  
10 curred after the date of the enactment of this Act.

11 (b) PRODUCING OIL AND GAS FROM MARGINAL  
12 WELLS.—

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

16 “(e) EXCEPTION FOR TAXPAYER WHO IS NOT  
17 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

18 “(1) IN GENERAL.—In the case of the first tax-  
19 able year beginning after the date of the enactment  
20 of the Gas Tax Holiday Act, subsection (a) shall not  
21 apply to any taxpayer which is not a small, inde-  
22 pendent oil and gas company.

23 “(2) AGGREGATION RULE.—For purposes of  
24 paragraph (1), all persons treated as a single em-

1       ployer under subsections (a) and (b) of section 52  
2       shall be treated as 1 person.”.

3               (2) EFFECTIVE DATE.—The amendment made  
4       by paragraph (1) shall apply to credits determined  
5       for taxable years beginning after the date of the en-  
6       actment of this Act.

7       (c) ENHANCED OIL RECOVERY CREDIT.—

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

11      “(f) EXCEPTION FOR TAXPAYER WHO IS NOT  
12      SMALL, INDEPENDENT OIL AND GAS COMPANY.—

13              “(1) IN GENERAL.—In the case of the first tax-  
14      able year beginning after the date of the enactment  
15      of the Gas Tax Holiday Act, subsection (a) shall not  
16      apply to any taxpayer which is not a small, inde-  
17      pendent oil and gas company.

18              “(2) AGGREGATION RULE.—For purposes of  
19      paragraph (1), all persons treated as a single em-  
20      ployer under subsections (a) and (b) of section 52  
21      shall be treated as 1 person.”.

22              (2) EFFECTIVE DATE.—The amendments made  
23      by this subsection shall apply to amounts paid or in-  
24      curred in taxable years beginning after the date of  
25      the enactment of this Act.

1 (d) INTANGIBLE DRILLING AND DEVELOPMENT  
2 COSTS IN THE CASE OF OIL AND GAS WELLS.—

3 (1) IN GENERAL.—Subsection (c) of section  
4 263 of the Internal Revenue Code of 1986 is amend-  
5 ed by adding at the end the following new sentence:  
6 “This subsection shall not apply to amounts paid or  
7 incurred by a taxpayer for the 1-year period begin-  
8 ning on the date of the enactment of the Gas Tax  
9 Holiday Act which is not a small, independent oil  
10 and gas company, determined by deeming all per-  
11 sons treated as a single employer under subsections  
12 (a) and (b) of section 52 as 1 person.”.

13 (2) EFFECTIVE DATE.—The amendment made  
14 by this subsection shall apply to amounts paid or in-  
15 curred in taxable years beginning after the date of  
16 the enactment of this Act.

17 (e) PERCENTAGE DEPLETION.—

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

21 “(f) EXCEPTION FOR TAXPAYER WHO IS NOT  
22 SMALL, INDEPENDENT OIL AND GAS COMPANY.—

23 “(1) IN GENERAL.—In the case of the first tax-  
24 able year beginning after the date of the enactment  
25 of the Gas Tax Holiday Act, this section and section

1       611 shall not apply to any taxpayer which is not a  
2       small, independent oil and gas company.

3           “(2) AGGREGATION RULE.—For purposes of  
4       paragraph (1), all persons treated as a single em-  
5       ployer under subsections (a) and (b) of section 52  
6       shall be treated as 1 person.”.

7           (2) CONFORMING AMENDMENT.—Section  
8       613A(c)(1) of such Code is amended by striking  
9       “subsection (d)” and inserting “subsections (d) and  
10      (f)”.

11          (3) EFFECTIVE DATE.—The amendments made  
12      by this subsection shall apply to taxable years begin-  
13      ning after the date of the enactment of this Act.

14      (f) TERTIARY INJECTANTS.—

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

18      “(d) EXCEPTION FOR TAXPAYER WHO IS NOT  
19      SMALL, INDEPENDENT OIL AND GAS COMPANY.—

20          “(1) IN GENERAL.—In the case of the first tax-  
21      able year beginning after the date of the enactment  
22      of the Gas Tax Holiday Act, subsection (a) shall not  
23      apply to any taxpayer which is not a small, inde-  
24      pendent oil and gas company.

1           “(2) EXCEPTION FOR QUALIFIED CARBON DI-  
2           OXIDE DISPOSED IN SECURE GEOLOGICAL STOR-  
3           AGE.—Paragraph (1) shall not apply in the case of  
4           any qualified tertiary injectant expense paid or in-  
5           curred for any tertiary injectant is qualified carbon  
6           dioxide (as defined in section 45Q(b)) which is dis-  
7           posed of by the taxpayer in secure geological storage  
8           (as defined by section 45Q(d)).

9           “(3) AGGREGATION RULE.—For purposes of  
10          paragraph (1), all persons treated as a single em-  
11          ployer under subsections (a) and (b) of section 52  
12          shall be treated as 1 person.”.

13          (2) EFFECTIVE DATE.—The amendment made  
14          by this subsection shall apply to expenses incurred  
15          after the date of the enactment of this Act.

16          (g) PASSIVE ACTIVITY LOSSES AND CREDITS LIM-  
17          ITED.—Paragraph (3) of section 469(c) of the Internal  
18          Revenue Code of 1986 is amended by adding at the end  
19          the following:

20                       “(C) EXCEPTION FOR TAXPAYER WHO IS  
21                       NOT SMALL, INDEPENDENT OIL AND GAS COM-  
22                       PANY.—

23                               “(i) IN GENERAL.—In the case of the  
24                               first taxable year beginning after the date  
25                               of the enactment of the Gas Tax Holiday

1 Act, subparagraph (A) shall not apply to  
2 any taxpayer which is not a small, inde-  
3 pendent oil and gas company.

4 “(ii) AGGREGATION RULE.—For pur-  
5 poses of clause (i), all persons treated as  
6 a single employer under subsections (a)  
7 and (b) of section 52 shall be treated as 1  
8 person.”.

9 (h) INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-  
10 TION ACTIVITIES.—

11 (1) IN GENERAL.—Section 199 of the Internal  
12 Revenue Code of 1986 is amended by adding at the  
13 end the following new subsection:

14 “(e) EXCEPTION FOR TAXPAYER WHO IS NOT  
15 SMALL, INDEPENDENT OIL AND GAS COMPANY.—In the  
16 case of the first taxable year beginning after the date of  
17 the enactment of the Gas Tax Holiday Act, subsection (a)  
18 shall not apply to the income derived from the production,  
19 transportation, or distribution of oil, natural gas, or any  
20 primary product (within the meaning of subsection (d)(9))  
21 thereof by any taxpayer which is an oil and gas company  
22 which is not a small, independent oil and gas company.”.

23 (2) EFFECTIVE DATE.—The amendment made  
24 by this subsection shall apply to taxable years begin-  
25 ning after the date of the enactment of this Act.

1 (i) PROHIBITION ON USING LAST-IN, FIRST-OUT AC-  
2 COUNTING FOR MAJOR INTEGRATED OIL COMPANIES.—

3 (1) IN GENERAL.—Section 472 of the Internal  
4 Revenue Code of 1986 is amended by adding at the  
5 end the following new subsection:

6 “(h) CERTAIN OIL COMPANIES.—Notwithstanding  
7 any other provision of this section, an oil and gas company  
8 which is not a small, independent oil and gas company  
9 may not use the method provided in subsection (b) in  
10 inventorying of any goods.”.

11 (2) EFFECTIVE DATE AND SPECIAL RULE.—

12 (A) IN GENERAL.—The amendment made  
13 by paragraph (1) shall apply to taxable years  
14 beginning after the date of the enactment of  
15 this Act.

16 (B) CHANGE IN METHOD OF ACCOUNT-  
17 ING.—In the case of any taxpayer required by  
18 the amendment made by this paragraph to  
19 change its method of accounting for its first  
20 taxable year beginning after the date of the en-  
21 actment of this Act—

22 (i) such change shall be treated as ini-  
23 tiated by the taxpayer,



1           (ii) such change shall be treated as  
2           made with the consent of the Secretary of  
3           the Treasury, and

4           (iii) the net amount of the adjust-  
5           ments required to be taken into account by  
6           the taxpayer under section 481 of the In-  
7           ternal Revenue Code of 1986 shall be  
8           taken into account ratably over a period  
9           (not greater than 8 taxable years) begin-  
10          ning with such first taxable year.

11          (j) MODIFICATIONS OF FOREIGN TAX CREDIT RULES  
12          APPLICABLE TO DUAL CAPACITY TAXPAYERS.—

13           (1) IN GENERAL.—Section 901 of the Internal  
14          Revenue Code of 1986 is amended by redesignating  
15          subsection (n) as subsection (o) and by inserting  
16          after subsection (m) the following new subsection:

17          “(n) SPECIAL RULES RELATING TO DUAL CAPACITY  
18          TAXPAYERS.—

19           “(1) GENERAL RULE.—Notwithstanding any  
20          other provision of this chapter, any amount paid or  
21          accrued by a dual capacity taxpayer to a foreign  
22          country or possession of the United States for any  
23          period with respect to combined foreign oil and gas  
24          income (as defined in section 907(b)(1)) shall not be  
25          considered a tax to the extent such amount exceeds

1 the amount (determined in accordance with regula-  
2 tions) which would have been required to be paid if  
3 the taxpayer were not a dual capacity taxpayer.

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

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

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

14 (2) EFFECTIVE DATE.—

15 (A) IN GENERAL.—The amendments made  
16 by this subsection shall apply to taxes paid or  
17 accrued in taxable years beginning after the  
18 date of the enactment of this Act.

19 (B) CONTRARY TREATY OBLIGATIONS  
20 UPHELD.—The amendments made by this sub-  
21 section shall not apply to the extent contrary to  
22 any treaty obligation of the United States.

1 **SEC. 4. RULES RELATING TO RECEIPTS AND EXPENDI-**  
2 **TURES FROM TREASURY.**

3 (a) **EXTENSION OF SECTION 3 PROVISIONS.**—If the  
4 Secretary of the Treasury determines that the expendi-  
5 tures from the Federal Treasury required to carry out the  
6 provisions of section 2 of this Act are greater than the  
7 revenues raised by the provisions of section 3 of this Act,  
8 the Secretary shall extend the period for which the provi-  
9 sions of section 3 are effective for such time as the Sec-  
10 retary determines is necessary to raise sufficient revenues  
11 to equal such expenditures.

12 (b) **USE OF EXCESS REVENUES FOR DEBT REDUC-**  
13 **TION.**—The excess revenues from the suspension of tax  
14 subsidies for oil and gas by reason of the amendments  
15 made by section 3 over the expenditures required to carry  
16 out the provisions of section 2 shall remain in the Treas-  
17 ury for purposes of debt reduction.

○