

Calendar No. 42112TH CONGRESS
1ST SESSION**S. 940**

To reduce the Federal budget deficit by closing big oil tax loopholes, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2011

Mr. MENENDEZ (for himself, Mrs. McCASKILL, Mr. TESTER, Mr. BROWN of Ohio, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mrs. MURRAY, Mr. LEAHY, Mr. REED, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. WHITEHOUSE, Mrs. BOXER, Ms. MIKULSKI, Mrs. GILLIBRAND, Mr. COONS, Mr. ROCKEFELLER, Mr. BLUMENTHAL, Mr. FRANKEN, Mr. CARDIN, Ms. STABENOW, Mr. MERKLEY, Mr. JOHNSON of South Dakota, Mr. SANDERS, Mrs. SHAHEEN, Mrs. FEINSTEIN, and Ms. KLOBUCHAR) introduced the following bill; which was read the first time

MAY 11, 2011

Read the second time and placed on the calendar

A BILL

To reduce the Federal budget deficit by closing big oil tax
loopholes, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Close Big Oil Tax Loopholes Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Sense of Senate on high gas prices.

TITLE I—CLOSE BIG OIL TAX LOOPHOLES

- Sec. 101. Modifications of foreign tax credit rules applicable to major integrated oil companies which are dual capacity taxpayers.
- Sec. 102. Limitation on section 199 deduction attributable to oil, natural gas, or primary products thereof.
- Sec. 103. Limitation on deduction for intangible drilling and development costs.
- Sec. 104. Limitation on percentage depletion allowance for oil and gas wells.
- Sec. 105. Limitation on deduction for tertiary injectants.

TITLE II—OUTER CONTINENTAL SHELF OIL AND NATURAL GAS

- Sec. 201. Repeal of outer Continental Shelf deep water and deep gas royalty relief.

TITLE III—MISCELLANEOUS

- Sec. 301. Deficit reduction.
- Sec. 302. Budgetary effects.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) gas prices have risen significantly largely in
9 response to unrest in north Africa and the Middle
10 East, unrest that speculators are capitalizing on to
11 increase oil futures prices and make huge profits;

12 (2) high gas prices are hurting the quality of
13 life of people of the United States, cutting into sav-
14 ings, and jeopardizing jobs and the economic recov-
15 ery of the United States;

1 (3) implementation of the regulatory reforms
2 enacted by Congress in the Dodd-Frank Wall Street
3 Reform and Consumer Protection Act (Public Law
4 111–203; 124 Stat. 1376) to prevent energy market
5 manipulation and control excessive speculation has
6 been delayed and has been threatened with funding
7 reductions in the House of Representatives;

8 (4) the United States is producing more oil
9 than any time in the last 13 years and companies
10 hold abundant inventories of oil, but the United
11 States is still importing more than 11,000,000 bar-
12 rels of oil per day and the Energy Information Ad-
13 ministration projects that full production in all on-
14 shore and offshore areas would reduce gas prices by
15 only 3 cents per gallon by 2030;

16 (5) domestic refining capacity now exceeds
17 United States demand for refined petroleum prod-
18 ucts, resulting in increased idle refinery capacity;

19 (6) oil companies are sitting idly on approxi-
20 mately 60,000,000 acres of leased Federal lands and
21 waters containing more than 11,000,000,000 barrels
22 of oil and 59,000,000,000,000 cubic feet of natural
23 gas;

24 (7) the United States possesses less than 2 per-
25 cent of the proven oil reserves of the world, yet con-

1 sumes an unsustainable 25 percent of the oil produc-
2 tion of the world;

3 (8) the economy of the United States suffers
4 huge net losses in jobs and productivity from the
5 growing annual trade deficit in energy, due mainly
6 to the outflow of \$250,000,000,000 or more to pay
7 for foreign oil;

8 (9) world oil prices have risen steadily since the
9 slow beginning of the global economic recovery and,
10 absent major efficiency or conservation improve-
11 ments or deployment of alternative fuels, those oil
12 prices are projected to remain well above \$100 per
13 barrel or higher as world demand grows as China,
14 India and other countries industrialize;

15 (10) the oil production policies of cartel of the
16 Organization of the Petroleum Exporting Countries
17 (OPEC) are a large determinant of the world price
18 of oil, so the economy of the United States will be
19 affected by decisions of OPEC as long as the United
20 States depends on oil for a significant portion of the
21 energy consumption of the United States;

22 (11) the major oil companies have accumulated
23 more than \$1,000,000,000,000 in net profits over
24 the last 10 years and collected more than
25 \$40,000,000,000 in tax breaks during the same pe-

1 riod, but have invested negligible amounts of those
2 funds into research and development of the produc-
3 tion of clean and renewable fuels made in the United
4 States, leaving consumers with few if any choices at
5 the pump; and

6 (12) in the Energy Independence and Security
7 Act of 2007 (42 U.S.C. 17001 et seq.), Congress in-
8 creased fuel economy standards for the first time in
9 30 years and established ambitious requirements for
10 domestic biofuels, actions that have reduced oil con-
11 sumption and reduced upward pressure on gas
12 prices.

13 **SEC. 3. SENSE OF SENATE ON HIGH GAS PRICES.**

14 It is the sense of the Senate that—

15 (1) the President and Administration should be
16 commended for recognizing the severity of high gas
17 prices and for taking appropriate actions to help re-
18 duce gas prices, including actions—

19 (A) to move forward with expeditious and
20 responsible domestic production in the Gulf of
21 Mexico and elsewhere;

22 (B) to form a Task Force led by the De-
23 partment of Justice to investigate and eliminate
24 oil and gas price gouging and market manipula-
25 tion;

1 (C) to establish a national oil savings goal
2 to cut imports by 33 percent by 2025;

3 (D) to call for 1,000,000 electric vehicles
4 to be on the road by 2015;

5 (E) to harmonize corporate average fuel
6 standards under section 32902 of title 49,
7 United States Code, (CAFE) and carbon pollu-
8 tion standards to achieve 1,800,000,000 barrels
9 in oil savings from new vehicles built before
10 2017, and working with stakeholders to in-
11 crease those savings from future year vehicles;

12 (F) to establish the National Clean Fleets
13 Partnership and Green Fleet Initiative to re-
14 duce diesel and gasoline use in fleets by incor-
15 porating electric vehicles, alternative fuels like
16 natural gas, and efficiency measures; and

17 (G) to clarify and expand the use of E-15
18 fuel for new motor vehicles;

19 (2) Congress should take additional actions to
20 complement the efforts of the President, including
21 enacting provisions—

22 (A) to encourage diligent and responsible
23 development of domestic oil and gas resources
24 onshore and off-shore;

1 (B) to eliminate subsidies for major oil and
2 gas companies and use the savings to promote
3 research, development, and deployment of af-
4 fordable alternative fuels and vehicles;

5 (C) to give consumers more choices at the
6 pump and incentives for buying vehicles that
7 displace petroleum consumption; and

8 (D) to direct and fund the Commodity Fu-
9 tures Trading Commission and the Federal
10 Trade Commission to rapidly implement the en-
11 ergy consumer protection requirements of the
12 Dodd-Frank Wall Street Reform and Consumer
13 Protection Act (Public Law 111–203; 124 Stat.
14 1376);

15 (3) the Organization of the Petroleum Export-
16 ing Countries (OPEC) should contribute to the sta-
17 bilization of world oil markets and prices and reduce
18 the burden of high gasoline prices borne by the con-
19 sumers in the United States by using existing idle
20 oil production capacity to compensate for any supply
21 shortages experienced in member countries; and

22 (4) the economic, environmental, and national
23 security of the United States depend on a sustained
24 effort to drastically reduce and eventually eliminate
25 the dependency of the United States on oil.

1 **TITLE I—CLOSE BIG OIL TAX**
2 **LOOPHOLES**

3 **SEC. 101. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
4 **APPLICABLE TO MAJOR INTEGRATED OIL**
5 **COMPANIES WHICH ARE DUAL CAPACITY**
6 **TAXPAYERS.**

7 (a) IN GENERAL.—Section 901 of the Internal Rev-
8 enue Code of 1986 is amended by redesignating subsection
9 (n) as subsection (o) and by inserting after subsection (m)
10 the following new subsection:

11 “(n) SPECIAL RULES RELATING TO MAJOR INTE-
12 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
13 TAXPAYERS.—

14 “(1) GENERAL RULE.—Notwithstanding any
15 other provision of this chapter, any amount paid or
16 accrued by a dual capacity taxpayer which is a
17 major integrated oil company (as defined in section
18 167(h)(5)(B)) to a foreign country or possession of
19 the United States for any period shall not be consid-
20 ered a tax—

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

1 “(B) to the extent such amount exceeds
2 the amount (determined in accordance with reg-
3 ulations) which—

4 “(i) is paid by such dual capacity tax-
5 payer pursuant to the generally applicable
6 income tax imposed by the country or pos-
7 session, or

8 “(ii) would be paid if the generally ap-
9 plicable income tax imposed by the country
10 or possession were applicable to such dual
11 capacity taxpayer.

12 Nothing in this paragraph shall be construed to
13 imply the proper treatment of any such amount not
14 in excess of the amount determined under subpara-
15 graph (B).

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

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

22 “(B) receives (or will receive) directly or
23 indirectly a specific economic benefit (as deter-
24 mined in accordance with regulations) from
25 such country or possession.

1 “(3) GENERALLY APPLICABLE INCOME TAX.—

2 For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘generally
4 applicable income tax’ means an income tax (or
5 a series of income taxes) which is generally im-
6 posed under the laws of a foreign country or
7 possession on income derived from the conduct
8 of a trade or business within such country or
9 possession.

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

13 “(i) persons who are not dual capacity
14 taxpayers, and

15 “(ii) persons who are citizens or resi-
16 dents of the foreign country or posses-
17 sion.”.

18 (b) EFFECTIVE DATE.—

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

23 (2) CONTRARY TREATY OBLIGATIONS
24 UPHELD.—The amendments made by this section

1 shall not apply to the extent contrary to any treaty
2 obligation of the United States.

3 **SEC. 102. LIMITATION ON SECTION 199 DEDUCTION ATTRIB-**
4 **UTABLE TO OIL, NATURAL GAS, OR PRIMARY**
5 **PRODUCTS THEREOF.**

6 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
7 tion 199(c) of the Internal Revenue Code of 1986 is
8 amended by adding at the end the following new subpara-
9 graph:

10 “(E) SPECIAL RULE FOR CERTAIN OIL
11 AND GAS INCOME.—In the case of any taxpayer
12 who is a major integrated oil company (as de-
13 fined in section 167(h)(5)(B)) for the taxable
14 year, the term ‘domestic production gross re-
15 ceipts’ shall not include gross receipts from the
16 production, transportation, or distribution of
17 oil, natural gas, or any primary product (within
18 the meaning of subsection (d)(9)) thereof.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2011.

22 **SEC. 103. LIMITATION ON DEDUCTION FOR INTANGIBLE**
23 **DRILLING AND DEVELOPMENT COSTS.**

24 (a) IN GENERAL.—Section 263(c) of the Internal
25 Revenue Code of 1986 is amended by adding at the end

1 the following new sentence: “This subsection shall not
 2 apply to amounts paid or incurred by a taxpayer in any
 3 taxable year in which such taxpayer is a major integrated
 4 oil company (as defined in section 167(h)(5)(B)).”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to amounts paid or incurred in tax-
 7 able years beginning after December 31, 2011.

8 **SEC. 104. LIMITATION ON PERCENTAGE DEPLETION AL-**
 9 **LOWANCE FOR OIL AND GAS WELLS.**

10 (a) IN GENERAL.—Section 613A of the Internal Rev-
 11 enue Code of 1986 is amended by adding at the end the
 12 following new subsection:

13 “(f) APPLICATION WITH RESPECT TO MAJOR INTE-
 14 GRATED OIL COMPANIES.—In the case of any taxable year
 15 in which the taxpayer is a major integrated oil company
 16 (as defined in section 167(h)(5)(B)), the allowance for
 17 percentage depletion shall be zero.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2011.

21 **SEC. 105. LIMITATION ON DEDUCTION FOR TERTIARY**
 22 **INJECTANTS.**

23 (a) IN GENERAL.—Section 193 of the Internal Rev-
 24 enue Code of 1986 is amended by adding at the end the
 25 following new subsection:

1 “(d) APPLICATION WITH RESPECT TO MAJOR INTE-
 2 GRATED OIL COMPANIES.—This section shall not apply to
 3 amounts paid or incurred by a taxpayer in any taxable
 4 year in which such taxpayer is a major integrated oil com-
 5 pany (as defined in section 167(h)(5)(B)).”.

6 (b) EFFECTIVE DATE.—The amendment made by
 7 this section shall apply to amounts paid or incurred in tax-
 8 able years beginning after December 31, 2011.

9 **TITLE II—OUTER CONTINENTAL**
 10 **SHELF OIL AND NATURAL GAS**

11 **SEC. 201. REPEAL OF OUTER CONTINENTAL SHELF DEEP**
 12 **WATER AND DEEP GAS ROYALTY RELIEF.**

13 (a) IN GENERAL.—Sections 344 and 345 of the En-
 14 ergy Policy Act of 2005 (42 U.S.C. 15904, 15905) are
 15 repealed.

16 (b) ADMINISTRATION.—The Secretary of the Interior
 17 shall not be required to provide for royalty relief in the
 18 lease sale terms beginning with the first lease sale held
 19 on or after the date of enactment of this Act for which
 20 a final notice of sale has not been published.

21 **TITLE III—MISCELLANEOUS**

22 **SEC. 301. DEFICIT REDUCTION.**

23 The net amount of any savings realized as a result
 24 of the enactment of this Act and the amendments made
 25 by this Act (after any expenditures authorized by this Act

1 and the amendments made by this Act) shall be deposited
2 in the Treasury and used for Federal budget deficit reduc-
3 tion or, if there is no Federal budget deficit, for reducing
4 the Federal debt in such manner as the Secretary of the
5 Treasury considers appropriate.

6 **SEC. 302. BUDGETARY EFFECTS.**

7 The budgetary effects of this Act, for the purpose of
8 complying with the Statutory Pay-As-You-Go-Act of 2010,
9 shall be determined by reference to the latest statement
10 titled “Budgetary Effects of PAYGO Legislation” for this
11 Act, submitted for printing in the Congressional Record
12 by the Chairman of the Senate Budget Committee, pro-
13 vided that such statement has been submitted prior to the
14 vote on passage.

Calendar No. 42

112TH CONGRESS
1ST Session
S. 940

A BILL

To reduce the Federal budget deficit by closing big
oil tax loopholes, and for other purposes.

MAY 11, 2011

Read the second time and placed on the calendar