

117TH CONGRESS
2D SESSION

S. 5216

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2022

Mr. MENENDEZ (for himself, Mr. PADILLA, Mr. BOOKER, Mrs. SHAHEEN, Ms. HIRONO, Mr. CARDIN, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

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

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

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

Sec. 1. Short title; table of contents.

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 deduction for intangible drilling and development costs; amortization of disallowed amounts.
 Sec. 103. Limitation on percentage depletion allowance for oil and gas wells.
 Sec. 104. Limitation on deduction for tertiary injectants.
 Sec. 105. Limitation on enhanced oil recovery credit.
 Sec. 106. Limitation on credit for carbon oxide sequestration.

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.

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.

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

“(n) SPECIAL RULES RELATING TO MAJOR 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 major integrated oil company (within the meaning of section 167(h)(5)) to a foreign country or possession

1 of the United States for any period shall not be con-
2 sidered a tax—

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

6 “(B) to the extent such amount exceeds
7 the amount (determined in accordance with reg-
8 ulations) which—

9 “(i) is paid by such dual capacity tax-
10 payer pursuant to the generally applicable
11 income tax imposed by the country or pos-
12 session, or

13 “(ii) would be paid if the generally ap-
14 plicable income tax imposed by the country
15 or possession were applicable to such dual
16 capacity taxpayer.

17 Nothing in this paragraph shall be construed to
18 imply the proper treatment of any such amount not
19 in excess of the amount determined under subpara-
20 graph (B).

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

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

3 “(B) receives (or will receive) directly or
4 indirectly a specific economic benefit (as deter-
5 mined in accordance with regulations) from
6 such country or possession.

7 “(3) GENERALLY APPLICABLE INCOME TAX.—
8 For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘generally
10 applicable income tax’ means an income tax (or
11 a series of income taxes) which is generally im-
12 posed under the laws of a foreign country or
13 possession on income derived from the conduct
14 of a trade or business within such country or
15 possession.

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

19 “(i) persons who are not dual capacity
20 taxpayers, and

21 “(ii) persons who are citizens or resi-
22 dents of the foreign country or posses-
23 sion.”.

24 (b) EFFECTIVE DATE.—

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

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

9 **SEC. 102. LIMITATION ON DEDUCTION FOR INTANGIBLE**
 10 **DRILLING AND DEVELOPMENT COSTS; AMOR-**
 11 **TIZATION OF DISALLOWED AMOUNTS.**

12 (a) IN GENERAL.—Section 263(c) of the Internal
 13 Revenue Code of 1986 is amended to read as follows:

14 “(c) INTANGIBLE DRILLING AND DEVELOPMENT
 15 COSTS IN THE CASE OF OIL AND GAS WELLS AND GEO-
 16 THERMAL WELLS.—

17 “(1) IN GENERAL.—Notwithstanding subsection
 18 (a), and except as provided in subsection (i), regula-
 19 tions shall be prescribed by the Secretary under this
 20 subtitle corresponding to the regulations which
 21 granted the option to deduct as expenses intangible
 22 drilling and development costs in the case of oil and
 23 gas wells and which were recognized and approved
 24 by the Congress in House Concurrent Resolution 50,
 25 Seventy-ninth Congress. Such regulations shall also

1 grant the option to deduct as expenses intangible
 2 drilling and development costs in the case of wells
 3 drilled for any geothermal deposit (as defined in sec-
 4 tion 613(e)(2)) to the same extent and in the same
 5 manner as such expenses are deductible in the case
 6 of oil and gas wells. This subsection shall not apply
 7 with respect to any costs to which any deduction is
 8 allowed under section 59(e) or 291.

9 “(2) EXCLUSION.—

10 “(A) IN GENERAL.—This subsection shall
 11 not apply to amounts paid or incurred by a tax-
 12 payer in any taxable year in which such tax-
 13 payer is an applicable large taxpayer.

14 “(B) APPLICABLE LARGE TAXPAYER.—For
 15 purposes of this paragraph—

16 “(i) IN GENERAL.—The term ‘applica-
 17 ble large taxpayer’ means, with respect to
 18 any taxable year, any taxpayer with gross
 19 receipts (within the meaning of section
 20 448(c)) for such taxable year in excess of
 21 \$50,000,000.

22 “(ii) AGGREGATION RULE.—All per-
 23 sons treated as a single employer under
 24 subsection (a) or (b) of section 52 or sub-
 25 section (m) or (o) of section 414 shall be

1 treated as one person for purposes of
 2 clause (i).

3 “(C) AMORTIZATION OF AMOUNTS NOT AL-
 4 LOWABLE AS DEDUCTIONS UNDER SUBPARA-
 5 GRAPH (A).—The amount not allowable as a de-
 6 duction for any taxable year by reason of sub-
 7 paragraph (A) shall be allowable as a deduction
 8 ratably over the 60-month period beginning
 9 with the month in which the costs are paid or
 10 incurred. For purposes of section 1254, any de-
 11 duction under this subparagraph shall be treat-
 12 ed as a deduction under this subsection.”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to amounts paid or incurred in tax-
 15 able years beginning after December 31, 2022.

16 **SEC. 103. LIMITATION ON PERCENTAGE DEPLETION AL-**
 17 **LOWANCE FOR OIL AND GAS WELLS.**

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

21 “(f) APPLICATION WITH RESPECT TO CERTAIN
 22 LARGE TAXPAYERS.—In the case of any taxable year in
 23 which the taxpayer is an applicable large taxpayer (as de-
 24 fined in section 263(c)(2)), the allowance for percentage
 25 depletion shall be zero.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2022.

4 **SEC. 104. LIMITATION ON DEDUCTION FOR TERTIARY**
 5 **INJECTANTS.**

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

9 “(d) APPLICATION WITH RESPECT TO CERTAIN
 10 LARGE TAXPAYERS.—

11 “(1) IN GENERAL.—This section shall not apply
 12 to amounts paid or incurred by a taxpayer in any
 13 taxable year in which such taxpayer is an applicable
 14 large taxpayer (as defined in section 263(c)(2)).

15 “(2) AMORTIZATION OF AMOUNTS NOT ALLOW-
 16 ABLE AS DEDUCTIONS UNDER PARAGRAPH (1).—The
 17 amount not allowable as a deduction for any taxable
 18 year by reason of paragraph (1) shall be allowable
 19 as a deduction ratably over the 60-month period be-
 20 ginning with the month in which the costs are paid
 21 or incurred.”.

22 (b) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply to amounts paid or incurred in tax-
 24 able years beginning after December 31, 2022.

1 **SEC. 105. LIMITATION ON ENHANCED OIL RECOVERY CRED-**
 2 **IT.**

3 (a) IN GENERAL.—Section 43 of the Internal Rev-
 4 enue Code of 1986 is amended by redesignating sub-
 5 sections (d) and (e) as subsections (e) and (f), respectively,
 6 and by inserting after subsection (c) the following new
 7 subsection:

8 “(d) APPLICATION WITH RESPECT TO CERTAIN
 9 LARGE TAXPAYERS.—In the case of any taxable year in
 10 which the taxpayer is an applicable large taxpayer (as de-
 11 fined in section 263(c)(2)), subsection (a) shall be applied
 12 by substituting ‘0 percent’ for ‘15 percent’.”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to amounts paid or incurred in tax-
 15 able years beginning after December 31, 2022.

16 **SEC. 106. LIMITATION ON CREDIT FOR CARBON OXIDE SE-**
 17 **QUESTRATION.**

18 (a) IN GENERAL.—Section 45Q(f) of the Internal
 19 Revenue Code of 1986 is amended by adding at the end
 20 the following new paragraph:

21 “(10) ELIMINATION OF USE OF CARBON OXIDE
 22 AS TERTIARY INJECTANT.—In the case of any quali-
 23 fied facility the construction of which begins after
 24 the date of the enactment of the Close Big Oil Tax
 25 Loopholes Act, subsection (a)(4)(B)(i) shall not
 26 apply.”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to amounts paid or incurred in tax-
 3 able years beginning after December 31, 2022.

4 **TITLE II—OUTER CONTINENTAL** 5 **SHELF OIL AND NATURAL GAS**

6 **SEC. 201. REPEAL OF OUTER CONTINENTAL SHELF DEEP** 7 **WATER AND DEEP GAS ROYALTY RELIEF.**

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

11 (b) ADMINISTRATION.—With respect to any lease de-
 12 scribed in section 344 or 345 of the Energy Policy Act
 13 of 2005 (42 U.S.C. 15904, 15905) (as in effect on the
 14 day before the date of enactment of this Act), beginning
 15 with the first lease sale held on or after that date of enact-
 16 ment for which a final notice of sale has not been pub-
 17 lished, the Secretary of the Interior shall not be required
 18 to provide for royalty relief in the lease sale terms.

19 **TITLE III—MISCELLANEOUS**

20 **SEC. 301. DEFICIT REDUCTION.**

21 The net amount of any savings realized as a result
 22 of the enactment of this Act and the amendments made
 23 by this Act (after any expenditures authorized by this Act
 24 and the amendments made by this Act) shall be deposited
 25 in the Treasury and used for Federal budget deficit reduc-

1 tion or, if there is no Federal budget deficit, for reducing
2 the Federal debt in such manner as the Secretary of the
3 Treasury considers appropriate.

4 **SEC. 302. BUDGETARY EFFECTS.**

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

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