

CRS Report for Congress

Energy Tax Policy: History and Current Issues

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Summary

Historically, U.S. federal energy tax policy promoted the supply of oil and gas. However, the 1970s witnessed (1) a significant cutback in the oil and gas industry's tax preferences, (2) the imposition of new excise taxes on oil, and (3) the introduction of numerous tax preferences for energy conservation, the development of alternative fuels, and the commercialization of the technologies for producing these fuels (renewables such as solar, wind, and biomass, and nonconventional fossil fuels such as shale oil and coalbed methane).

The Reagan Administration, using a free-market approach, advocated repeal of the windfall profit tax on oil and the repeal or phase-out of most energy tax preferences — for oil and gas, as well as alternative fuels. Due to the combined effects of the Economic Recovery Tax Act and the energy tax subsidies that had not been repealed, which together created negative effective tax rates in some cases, the actual energy tax policy differed from the stated policy. The George H. W. Bush and Bill Clinton years witnessed a return to a much more activist energy tax policy, with an emphasis on energy conservation and alternative fuels. While the original aim was to reduce demand for imported oil, energy tax policy was also increasingly viewed as a tool for achieving environmental and fiscal objectives. The Clinton Administration's energy tax policy emphasized the environmental benefits of reducing greenhouse gases and global climate change, but it will also be remembered for its failed proposal to enact a broadly based energy tax on Btus (British thermal units) and its 1993 across-the-board increase in motor fuels taxes of 4.3¢/gallon.

The Working Families Tax Relief Act of 2004 (P.L. 108-311) and the American Jobs Creation Act of 2004 (P.L. 108-357) each contained several energy-related tax breaks. The George W. Bush Administration has proposed a limited number of energy tax measures, but the 109th Congress enacted the Energy Policy Act of 2005 (P.L. 109-58) — comprehensive energy legislation that included numerous energy tax incentives to increase the supply of, and reduce the demand for, fossil fuels and electricity. Signed by President Bush on August 8, 2005, it provided a net energy tax cut of \$11.5 billion (\$14.5 billion gross energy tax cuts, less \$3 billion of energy tax increases). The act included tax incentives for energy efficiency in residential and commercial buildings and for more energy efficient vehicles, and tax incentives for several types of alternative and renewable resources, such as solar and geothermal. The Tax Relief and Health Care Act of 2006 (P.L. 109-432), enacted in December 2006, provided for one-year extensions of these provisions.

The current energy tax structure favors tax incentives for alternative and renewable fuels supply relative to energy from conventional fossil fuels, and this posture was accentuated under the Energy Policy Act of 2005. The \$16 billion energy tax bill reported by the House Ways and Means Committee (H.R. 2776) was approved by the House on August 4, 2007 and incorporated into H.R. 3221, the House's comprehensive energy policy legislation. The Senate defeated a procedural motion that would have invoked cloture on the \$32 billion tax title to the overall comprehensive energy bill (H.R. 6). Energy tax incentives are also in the Senate's substitute version of the farm bill (H.R. 2419).

Contents

Introduction	1
Background	2
Energy Tax Policy from 1918 to 1970: Promoting Oil and Gas	2
Energy Tax Policy During the 1970s: Conservation and Alternative Fuels	3
Energy Tax Policy in the 1980s: The “Free-Market Approach”	6
Energy Tax Policy After 1988	7
Energy Tax Incentives in Comprehensive Energy Legislation Since 1998	8
Brief History of Comprehensive Energy Policy Proposals	8
Energy Tax Action in the 107 th Congress	9
Energy Tax Action in the 108 th Congress	10
Energy Action in the 109 th Congress	11
The Energy Policy Act of 2005 (P.L. 109-58)	12
The Tax Relief and Health Care Act of 2006 (P.L. 109-432)	13
Current Posture of Energy Tax Policy	13
Energy Tax Policy Outlook	14
110 th Congress	15
The Tax Titles of H.R. 3221, The House’s Comprehensive Energy Policy Bill	15
Renewable Production Incentives	16
Conservation Incentives	16
Tax Increases on the Oil and Gas Industry	16
The Senate Finance Committee’s Energy Tax Bill	17
Likely Effects on Oil and Gas Prices and Oil Import Dependence	18
Neutrality of the Corporate Income Tax	18
Proposed Increases in Excise Taxes	20
The Oil Spill Tax	20
Gasoline Tax Collection Point	21
Proposed New 13% Severance Tax on OCS Oil and Gas	21
Energy Tax Incentives in the Farm Bill	22
For Additional Reading	25

Energy Tax Policy: History and Current Issues

Introduction

Energy tax policy involves the use of the government's main fiscal instruments — taxes (financial disincentives) and tax subsidies (or incentives) — to alter the allocation or configuration of energy resources. In theory, energy taxes and subsidies, like tax policy instruments in general, are intended either to correct a problem or distortion in the energy markets or to achieve some social, economic (efficiency, equity, or even macroeconomic), environmental, or fiscal objective. In practice, however, energy tax policy in the United States is made in a political setting, being determined by the views and interests of the key players in this setting: politicians, special interest groups, bureaucrats, and academic scholars. This implies that the policy does not generally, if ever, adhere to the principles of economic or public finance theory alone; that more often than not, energy tax policy may compound existing distortions, rather than correct them.¹

The idea of applying tax policy instruments to the energy markets is not new, but until the 1970s, energy tax policy had been little used, except for the oil and gas industry. Recurrent energy-related problems since the 1970s — oil embargoes, oil price and supply shocks, wide petroleum price variations and price spikes, large geographical price disparities, tight energy supplies, and rising oil import dependence, as well as increased concern for the environment — have caused policymakers to look toward energy taxes and subsidies with greater frequency.

Comprehensive energy policy legislation containing numerous tax incentives, and some tax increases on the oil industry, was signed on August 8, 2005 (P.L. 109-58). The law, the Energy Policy Act of 2005, contained about \$15 billion in energy tax incentives over 11 years, including numerous tax incentives for the supply of conventional fuels. However, record oil industry profits, due primarily to high crude oil and refined oil product prices, and the 2006 mid-term elections, which gave the control of the Congress to the Democratic Party, has changed the mood of policymakers. Instead of stimulating the traditional fuels industry — oil, gas, and electricity from coal — in addition to incentivizing alternative fuels and energy conservation, the mood now is to take away, or rescind, the 2005 tax incentives and use the money to further stimulate alternative fuels and energy conservation. A minor step in this direction was made, on May 17, 2006, when President Bush signed a \$70 billion tax reconciliation bill (P.L. 109-222). This bill included a provision that

¹ The theory underlying these distortions, and the nature of the distortions, is discussed in detail in a companion report: CRS Report RL30406, *Energy Tax Policy: An Economic Analysis*, by Salvatore Lazzari.

further increased taxes on major integrated oil companies by extending the depreciation recovery period for geological and geophysical costs from two to five years (thus taking back some of the benefits enacted under the 2005 law). And currently, the major tax writing committees in both Houses are considering further, but more significant, tax increases on the oil and gas industry to fund additional tax cuts for the alternative fuels and energy conservation industries. These bills are being considered as part of the debate over new versions of comprehensive energy policy legislation in the 110th Congress (H.R. 6).

This report discusses the history, current posture, and outlook for federal energy tax policy. It also discusses current energy tax proposals and major energy tax provisions enacted in the 109th Congress. (For a general economic analysis of energy tax policy, see CRS Report RL30406, *Energy Tax Policy: An Economic Analysis*, by Salvatore Lazzari.)

Background

The history of federal energy tax policy can be divided into four eras: the oil and gas period from 1916 to 1970, the energy crisis period of the 1970s, the free-market era of the Reagan Administration, and the post-Reagan era — including the period since 1998, which has witnessed a plethora of energy tax proposals to address recurring energy market problems.

Energy Tax Policy from 1918 to 1970: Promoting Oil and Gas

Historically, federal energy tax policy was focused on increasing domestic oil and gas reserves and production; there were no tax incentives for energy conservation or for alternative fuels. Two oil/gas tax code preferences embodied this policy: (1) expensing of intangible drilling costs (IDCs) and dry hole costs, which was introduced in 1916, and (2) the percentage depletion allowance, first enacted in 1926 (coal was added in 1932).²

Expensing of IDCs (such as labor costs, material costs, supplies, and repairs associated with drilling a well) gave oil and gas producers the benefit of fully deducting from the first year's income ("writing off") a significant portion of the total costs of bringing a well into production, costs that would otherwise (i.e., in theory and under standard, accepted tax accounting methods) be capitalized (i.e., written off during the life of the well as income is earned). For dry holes, which comprised on average about 80% of all the wells drilled, the costs were also allowed to be deducted in the year drilled (expensed) and deducted against other types of income, which led to many tax shelters that benefitted primarily high-income

² Tax preferences are special tax provisions — such as tax credits, exemptions, exclusions, deductions, deferrals, or favorable tax rates — that reduce tax rates for the preferred economic activity and favored taxpayers. Such preferences, also known as tax expenditures or tax subsidies, generally deviate from a neutral tax system and from generally accepted economic and accounting principles unless they are targeted to the correction of preexisting market distortions.

taxpayers. Expensing accelerates tax deductions, defers tax liability, and encourages oil and gas prospecting, drilling, and the development of reserves.

The oil and gas percentage depletion allowance permitted oil and gas producers to claim 27.5% of revenue as a deduction for the cost of exhaustion or depletion of the deposit, allowing deductions in excess of capital investment (i.e., in excess of adjusted cost depletion) — the economically neutral method of capital recovery for the extractive industries. Percentage depletion encourages faster mineral development than cost depletion (the equivalent of depreciation of plants and equipment).

These and other tax subsidies discussed later (e.g., capital gains treatment of the sale of successful properties, the special exemption from the passive loss limitation rules, and special tax credits) reduced marginal effective tax rates in the oil and gas industries, reduced production costs, and increased investments in locating reserves (increased exploration). They also led to more profitable production and some acceleration of oil and gas production (increased rate of extraction), and more rapid depletion of energy resources than would otherwise occur. Such subsidies tend to channel resources into these activities that otherwise would be used for oil and gas activities abroad or for other economic activities in the United States. Relatively low oil prices encouraged petroleum consumption (as opposed to conservation) and inhibited the development of alternatives to fossil fuels, such as unconventional fuels and renewable forms of energy. Oil and gas production increased from 16% of total U.S. energy production in 1920 to 71.1% of total energy production in 1970 (the peak year).

Energy Tax Policy During the 1970s: Conservation and Alternative Fuels

Three developments during the 1970s caused a dramatic shift in the focus of federal energy tax policy. First, the large revenue losses associated with the oil and gas tax preferences became increasingly hard to justify in the face of increasing federal budget deficits — and in view of the longstanding economic arguments against the special tax treatment for oil and gas, as noted in the above paragraph. Second, heightened awareness of environmental pollution and concern for environmental degradation, and the increased importance of distributional issues in policy formulation (i.e., equity and fairness), lost the domestic oil and gas industry much political support. Thus, it became more difficult to justify percentage depletion and other subsidies, largely claimed by wealthy individuals and big vertically integrated oil companies. More importantly, during the 1970s there were two energy crises: the oil embargo of 1973 — also known as the first oil shock — and the Iranian Revolution in 1978-1979, which focused policymakers' attention on the problems (alleged “failures”) in the energy markets and how these problems reverberated throughout the economy, causing stagflation, shortages, productivity problems, rising import dependence, and other economic and social problems.

These developments caused federal energy tax policy to shift from oil and gas supply toward energy conservation (reduced energy demand) and alternative energy sources.

Three broad actions were taken through the tax code to implement the new energy tax policy during the 1970s. First, the oil industry's two major tax preferences — expensing of IDCs and percentage depletion — were significantly reduced, particularly the percentage depletion allowance, which was eliminated for the major integrated oil companies and reduced for the remaining producers. Other oil and gas tax benefits were also cut back during this period. For example, oil- and gas-fired boilers used in steam generation (e.g., to generate electricity) could no longer qualify for accelerated depreciation as a result of the Energy Tax Act of 1978 (as discussed below).

The second broad policy action was the imposition of several new excise taxes penalizing the use of conventional fossil fuels, particularly oil and gas (and later coal). The Energy Tax Act of 1978 (ETA, P.L. 95-618) created a federal “gas guzzler” excise tax on the sale of automobiles with relatively low fuel economy ratings. This tax, which is still in effect, currently ranges from \$1,000 for an automobile rated between 21.5 and 22.5 miles per gallon (mpg) to \$7,700 for an automobile rated at less than 12.5 mpg. Chief among the taxes on oil was the windfall profit tax (WPT) enacted in 1980 (P.L. 96-223). The WPT imposed an excise tax of 15% to 70% on the difference between the market price of oil and a predetermined (adjusted) base price. This tax, which was repealed in 1988, was part of a political compromise that decontrolled oil prices. (Between 1971 and 1980, oil prices were controlled under President Nixon's Economic Stabilization Act of 1970 — the so-called “wage-price freeze.”) (For more detail on the windfall profit tax on crude oil that was imposed from 1980 until its repeal in 1988, see CRS Report RL33305, *The Windfall Profit Tax on Crude Oil: Implications for Current Energy Policy*, by Salvatore Lazzari.)

Another, but relatively small, excise tax on petroleum was instituted in 1980: the environmental excise tax on crude oil received at a U.S. refinery. This tax, part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), otherwise known as the “Superfund” program, was designed to charge oil refineries for the cost of releasing any hazardous materials that resulted from the refining of crude oil. The tax rate was set initially at 0.79¢ (\$0.0079) per barrel and was subsequently raised to 9.70¢ per barrel. This tax expired at the end of 1995, but legislation has been proposed since then to reinstate it as part of Superfund reauthorization.

The third broad action taken during the 1970s to implement the new and refocused energy tax policy was the introduction of numerous tax incentives or subsidies (e.g., special tax credits, deductions, exclusions) for energy conservation, the development of alternative fuels (renewable and nonconventional fuels), and the commercialization of energy efficiency and alternative fuels technologies. Most of these new tax subsidies were introduced as part of the Energy Tax Act of 1978 and expanded under the WPT, which also introduced additional new energy tax subsidies. The following list describes these:

- *Residential and Business Energy Tax Credits.* The ETA provided income tax credits for homeowners and businesses that invested in a variety of energy conservation products (e.g., insulation and other energy-conserving components) and for solar and wind energy

equipment installed in a principal home or a business. The business energy tax credits were 10% to 15% of the investment in conservation or alternative fuels technologies, such as synthetic fuels, solar, wind, geothermal, and biomass. These tax credits were also expanded as part of the WPT, but they generally expired (except for business use of solar and geothermal technologies) as scheduled either in 1982 or 1985. A 15% investment tax credit for business use of solar and geothermal energy, which was made permanent, is all that remains of these tax credits.

- *Tax Subsidies for Alcohol Fuels.* The ETA also introduced the excise tax exemption for gasohol, recently at 5.2¢ per gallon out of a gasoline tax of 18.4¢/gal. Subsequent legislation extended the exemption and converted it into an immediate tax credit (currently at 51¢/gallon of *ethanol*).
- *Percentage Depletion for Geothermal.* The ETA made geothermal deposits eligible for the percentage depletion allowance, at the rate of 22%. Currently the rate is 15%.
- *§29 Tax Credit for Unconventional Fuels.* The 1980 WPT included a \$3.00 (in 1979 dollars) production tax credit to stimulate the supply of selected unconventional fuels: oil from shale or tar sands, gas produced from geo-pressurized brine, Devonian shale, tight formations, or coalbed methane, gas from biomass, and synthetic fuels from coal. In current dollars this credit, which is still in effect for certain types of fuels, was \$6.56 per barrel of liquid fuels and about \$1.16 per thousand cubic feet (mcf) of gas in 2004.
- *Tax-Exempt Interest on Industrial Development Bonds.* The WPT made facilities for producing fuels from solid waste exempt from federal taxation of interest on industrial development bonds (IDBs). This exemption was for the benefit of the development of alcohol fuels produced from biomass, for solid-waste-to-energy facilities, for hydroelectric facilities, and for facilities for producing renewable energy. IDBs, which provide significant benefits to state and local electric utilities (public power), had become a popular source of financing for renewable energy projects.

Some of these incentives — for example, the residential energy tax credits — have since expired, but others remain and still new ones have been introduced, such as the §45 renewable electricity tax credit, which was introduced in 1992 and expanded under the American Jobs Creation Act of 2004 (P.L. 108-357). This approach toward energy tax policy — subsidizing a plethora of different forms of energy (both conventional and renewable) and providing incentives for diverse energy conservation (efficiency) technologies in as many sectors as possible — has been the paradigm followed by policymakers since the 1970s. A significant increase in nontax interventions in the energy markets — laws and regulations, such as the Corporate Average Fuel Economy (CAFÉ) standards to reduce transportation fuel use, and other interventions through the budget and the credit markets — has also

been a significant feature of energy policy since the 1970s. This included some of the most extensive energy legislation ever enacted.

Energy Tax Policy in the 1980s: The “Free-Market Approach”

The Reagan Administration opposed using the tax law to promote oil and gas development, energy conservation, or the supply of alternative fuels. The idea was to have a more neutral and less distortionary energy tax policy, which economic theory predicts would make energy markets work more efficiently and generate benefits to the general economy. The Reagan Administration believed that the responsibility for commercializing conservation and alternative energy technologies rested with the private sector and that high oil prices — real oil prices (corrected for inflation) were at historically high levels in 1981 and 1982 — would be ample encouragement for the development of alternative energy resources. High oil prices in themselves create conservation incentives and stimulate oil and gas production.

President Reagan’s free-market views were well known prior to his election. During the 1980 presidential campaign, he proposed repealing the WPT, deregulating oil and natural gas prices, and minimizing government intervention in the energy markets. The Reagan Administration’s energy tax policy was professed more formally in several energy and tax policy studies, including its 1981 National Energy Policy Plan and the 1983 update to this plan; it culminated in a 1984 Treasury study on general tax reform, which also proposed fundamental reforms of federal energy tax policy. In terms of actual legislation, many of the Reagan Administration’s objectives were realized, although as discussed below there were unintended effects.

In 1982, the business energy tax credits on most types of nonrenewable technologies — those enacted under the ETA of 1978 — were allowed to expire as scheduled; other business credits and the residential energy tax credits were allowed to expire at the end of 1985, also as scheduled. Only the tax credits for business solar, geothermal, ocean thermal, and biomass technologies were extended. As mentioned above, today the tax credit for business investment in solar and geothermal technologies, which has since been reduced to 10%, is all that remains of these tax credits. A final accomplishment was the repeal of the WPT, but not until 1988, the end of Reagan’s second term. The Reagan Administration’s other energy tax policy proposals, however, were not adopted. The tax incentives for oil and gas were not eliminated, although they were pared back as part of the Tax Reform Act (TRA) of 1986.

Although the Reagan Administration’s objective was to create a free-market energy policy, significant liberalization of the depreciation system and reduction in marginal tax rates — both the result of the Economic Recovery Tax Act of 1981 (ERTA, P.L. 97-34) — combined with the regular investment tax credit and the business energy investment tax credits, resulted in negative effective tax rates for many investments, including alternative energy investments, such as solar and synthetic fuels. Also, the retention of percentage depletion and expensing of IDCs (even at the reduced rates) rendered oil and gas investments still favored relative to investments in general.

Energy Tax Policy After 1988

After the Reagan Administration, several major energy and non-energy laws were enacted that amended the energy tax laws in several ways, some major:

- *Revenue Provisions of the Omnibus Reconciliation Act of 1990.* President George H.W. Bush's first major tax law included numerous energy tax incentives: (1) for conservation (and deficit reduction), the law increased the gasoline tax by 5¢/gallon and doubled the gas-guzzler tax; (2) for oil and gas, the law introduced a 10% tax credit for enhanced oil recovery expenditures, liberalized some of the restrictions on the percentage depletion allowance, and reduced the impact of the alternative minimum tax on oil and gas investments; and (3) for alternative fuels, the law expanded the §29 tax credit for unconventional fuels and introduced the tax credit for small producers of ethanol used as a motor fuel.
- *Energy Policy Act of 1992 (P.L. 102-486).* This broad energy measure introduced the \$45 tax credit, at 1.5¢ per kilowatt hour, for electricity generated from wind and "closed-loop" biomass systems. (Poultry litter was added later.) For new facilities, this tax credit expired at the end of 2001 and again in 2003 but has been retroactively extended by recent tax legislation (as discussed below). In addition, the 1992 law (1) added an income tax deduction for the costs, up to \$2,000, of clean-fuel powered vehicles; (2) liberalized the alcohol fuels tax exemption; (3) expanded the §29 production tax credit for nonconventional energy resources; and (4) liberalized the tax breaks for oil and gas.
- *Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).* President Clinton proposed a differential Btu tax on fossil fuels (a broadly based general tax primarily on oil, gas, and coal based on the British thermal units of heat output), which was dropped in favor of a broadly applied 4.3¢/gallon increase in the excise taxes on motor fuels, with revenues allocated for deficit reduction rather than the various trust funds.
- *Taxpayer Relief Act of 1997 (P.L. 105-34).* This law included a variety of excise tax provisions for motor fuels, of which some involved tax reductions on alternative transportation fuels, and some involved increases, such as on kerosene, which on balance further tilted energy tax policy toward alternative fuels.
- *Tax Relief and Extension Act.* Enacted as Title V of the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), it extended and liberalized the 1.5¢/kWh renewable electricity production tax credit, and renewed the suspension of the net income limit on the percentage depletion allowance for marginal oil and gas wells.

As this list suggests, the post-Reagan energy tax policy returned more to the interventionist course established during the 1970s and primarily was directed at energy conservation and alternative fuels, mostly for the purpose of reducing oil import dependence and enhancing energy security. However, there is an environmental twist to energy tax policy during this period, particularly in the Clinton years. Fiscal concerns, which for most of that period created a perennial search for more revenues to reduce budget deficits, have also driven energy tax policy proposals during the post-Reagan era. This is underscored by proposals, which have not been enacted, to impose broad-based energy taxes such as the Btu tax or the carbon tax to mitigate greenhouse gas emissions.

Another interesting feature of the post-Reagan energy tax policy is that while the primary focus continues to be energy conservation and alternative fuels, no energy tax legislation has been enacted during this period that does not also include some, relatively minor, tax relief for the oil and gas industry, either in the form of new tax incentives or liberalization of existing tax breaks (or both).

Energy Tax Incentives in Comprehensive Energy Legislation Since 1998

Several negative energy market developments since about 1998, characterized by some as an “energy crisis,” have led to congressional action on comprehensive energy proposals, which included numerous energy tax incentives.

Brief History of Comprehensive Energy Policy Proposals

Although the primary rationale for comprehensive energy legislation has historically been spiking petroleum prices, and to a lesser extent spiking natural gas and electricity prices, the origin of bills introduced in the late 1990s was the very low crude oil prices of that period. Domestic crude oil prices reached a low of just over \$10 per barrel in the winter of 1998-1999, among the lowest crude oil prices in history after correcting for inflation. From 1986 to 1999, oil prices averaged about \$17 per barrel, fluctuating between \$12 and \$20 per barrel. These low oil prices hurt oil producers, benefitted oil refiners, and encouraged consumption. They also served as a disincentive to conservation and investment in energy efficiency technologies and discouraged production of alternative fuels and renewable technologies. To address the low oil prices, there were many tax bills in the first session of the 106th Congress (1999) focused on production tax credits for marginal or stripper wells, but they also included carryback provisions for net operating losses, and other fossil fuels supply provisions.

By summer 1999, crude oil prices rose to about \$20 per barrel, and peaked at more than \$30 per barrel by summer 2000, causing higher gasoline, diesel, and heating oil prices. To address the effects of rising crude oil prices, legislative proposals again focused on production tax credits and other supply incentives. The rationale was not tax relief for a depressed industry but tax incentives to increase output, reduce prices, and provide price relief to consumers.

In addition to higher petroleum prices there were forces — some of which were understood (factors such as environmental regulations and pipeline breaks) and others that are still are not so clearly understood — that caused the prices of refined petroleum products to spike. In response, there were proposals in 2000 to either temporarily reduce or eliminate the federal excise tax on gasoline, diesel, and other special motor fuels. The proposals aimed to help consumers (including truckers) cushion the financial effect of the price spikes. The Midwest gasoline price spike in summer 2000 kept interest in these excise tax moratoria alive and generated interest in proposals for a windfall profit tax on oil companies, which, by then, were earning substantial profits from high prices.

Despite numerous bills to address these issues, no major energy tax bill was enacted in the 106th Congress. However, some minor amendments to energy tax provisions were enacted as part of nonenergy tax bills. This includes Title V of the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170). Also, the 106th Congress did enact a package of \$500 million in loan guarantees for small independent oil and gas producers (P.L. 106-51).

Energy Tax Action in the 107th Congress

In early 2001, the 107th Congress faced a combination of fluctuating oil prices, an electricity crisis in California, and spiking natural gas prices. The gas prices had increased steadily in 2000 and reached \$9 per thousand cubic feet (mcf) at the outset of the 107th Congress. At one point, spot market prices reached about \$30 per mcf, the energy equivalent of \$175 per barrel of oil. The combination of energy problems had developed into an “energy crisis,” which prompted congressional action on a comprehensive energy policy bill — the first since 1992 — that included a significant expansion of energy tax incentives and subsidies and other energy policy measures.

In 2002, the House and Senate approved two distinct versions of an omnibus energy bill, H.R. 4. While there were substantial differences in the nontax provisions of the bill, the energy tax measures also differed significantly. The House bill proposed larger energy tax cuts, with some energy tax increases. It would have reduced energy taxes by about \$36.5 billion over 10 years, in contrast to the Senate bill, which cut about \$18.3 billion over 10 years, including about \$5.1 billion in tax credits over 10 years for two mandates: a renewable energy portfolio standard (\$0.3 billion) and a renewable fuel standard (\$4.8 billion). The House version emphasized conventional fuels supply, including capital investment incentives to stimulate production and distribution of oil, natural gas, and electricity. This focus assumed that recent energy problems were due mainly to supply and capacity shortages driven by economic growth and low energy prices. In comparison, the Senate bill would have provided a much smaller amount of tax incentives for fossil fuels and nuclear power and somewhat fewer incentives for energy efficiency, but provided more incentives for alternative and renewable fuels. The conference committee on H.R. 4 could not resolve differences, so the bills were dropped on November 13, 2002.

Energy Tax Action in the 108th Congress

On the House side, on April 3, 2003, the Ways and Means Committee (WMC) voted 24-12 for an energy tax incentives bill (H.R. 1531) that was incorporated into H.R. 6 and approved by the House on April 11, 2003, by a vote of 247-175. The House version of H.R. 6 provided about \$17.1 billion of energy tax incentives and included \$83 million of non-energy tax increases, or offsets. This bill was a substantially scaled-down version of the House energy tax bill, H.R. 2511 (107th Congress), which was incorporated into H.R. 4, the House energy bill of the 107th Congress that never became law. After returning from the August 2003 recess, a House and Senate conference committee negotiated differences among provisions in three energy policy bills: the House and Senate versions of H.R. 6, and a substitute to the Senate Finance Committee (SFC) bill — a modified (or amended) version of S. 1149 substituted for Senate H.R. 6 in conference as S.Amdt. 1424 and S.Amdt. 1431.

On November 14, 2003, House and Senate conferees reconciled the few remaining differences over the two conference versions of H.R. 6, which primarily centered on several energy tax issues — ethanol tax subsidies, the §29 unconventional fuels tax credit, tax incentives for nuclear power, and clean coal. On November 18, 2003, the House approved, by a fairly wide margin (246-180), the conference report containing about \$23.5 billion of energy tax incentives. However, the proposed ethanol mandate would further reduce energy tax receipts — the 10-year revenue loss was projected to be around \$26 billion. On November 24, Senate Republicans put aside attempts to enact H.R. 6. A number of uneasy alliances pieced together to bridge contentious divides over regional issues as varied as electricity, fuel additives (MTBE), and natural gas subsidies, failed to secure the necessary 60 votes to overcome a Democratic filibuster before Congress's adjournment for the holiday season. This represented the third attempt to pass comprehensive energy legislation, a top priority for many Republicans in Congress and for President Bush.

Senator Domenici introduced a smaller energy bill as S. 2095 on February 12, 2004. S. 2095 included a slightly modified version of the amended energy tax bill S. 1149; the tax provisions of S. 2095 were added to the export tax repeal bill S. 1637, on April 5, 2004. The Senate approved S. 1637, with the energy tax measures, on May 11. H.R. 4520, the House version of the export tax repeal legislation, did not contain energy tax measures; they were incorporated into H.R. 6.

Some energy tax incentives were enacted on October 4, 2004, as part of the Working Families Tax Relief Act of 2004 (P.L. 108-311), a \$146 billion package of middle class and business tax breaks. This legislation, which was signed into law on October 4, 2004, retroactively extended four energy tax subsidies: the \$45 renewable tax credit, suspension of the 100% net income limitation for the oil and gas percentage depletion allowance, the \$4,000 tax credit for electric vehicles, and the deduction for clean fuel vehicles (which ranges from \$2,000 to \$50,000). The \$45 tax credit and the suspension of the 100% net income limitation had each expired on January 1, 2004; they were retroactively extended through December 31, 2005. The electric vehicle credit and the clean-vehicle income tax deduction were being phased out gradually beginning on January 1, 2004. P.L. 108-311 arrested the phase-down — providing 100% of the tax breaks — through 2005, but resumed it beginning on

January 1, 2006, when only 25% of the tax break was available. (For more information, see CRS Report RL32265, *Expired and Expiring Energy Tax Incentives*, by Salvatore Lazzari.)

The American Jobs Creation Act of 2004 (P.L. 108-357), enacted on October 22, 2004, included about \$5 billion in energy tax incentives. This bill, commonly referred to as the “FSC-ETI” or “jobs” bill, contained several energy-related tax breaks:

- Expansion of the renewable electricity credit to open-loop biomass, geothermal, solar, small irrigation power, and municipal solid waste facilities, and introduction of a \$4.375/ton production tax credit for refined coal — not for the electricity produced from the coal. (The refined coal tax credit was originally part of proposed expansion of the §29 tax credit in the 2003 and 2004 proposed comprehensive energy policy bills, which already benefitted “synfuels” from coal. When comprehensive energy policy legislation failed, the refined coal credit was added to the “jobs” bill, which inserted the provision into the renewable electricity section of the tax code).
- Creation of a new tax credit for oil and gas from marginal (small) wells, triggered when oil prices are below \$18/barrel (\$2/mcf for natural gas).
- Liberalization of the tax treatment of electric cooperatives under a restructured electricity market.
- Reduction of the depreciation recovery period for certain Alaska pipelines to seven years (15 years under prior law).
- Extension of the 15% enhanced oil recovery credit to Alaska gas processing facilities.
- Reform of the tax subsidies for fuel ethanol — basically replacing the excise tax exemption with an equivalent immediate tax credit — and expansion of the credit to include biodiesel (at a higher rate for biodiesel made from virgin oils).
- Repeal of the general fund component (4.3¢/gal.) excise tax on diesel fuel used in trains and barges.
- A new \$2.10/barrel tax credit for production of low-sulfur diesel fuel and “expensing” of (basically, faster depreciation deductions for) the capital costs to produce such fuels.

Energy Action in the 109th Congress

The 109th Congress enacted the Energy Policy Act of 2005 (P.L. 109-58), which included the most extensive amendments to U.S. energy tax laws since 1992, and the

Tax Relief and Health Care Act of 2006, which extended the energy tax subsidies enacted under the 2005 Energy Policy Act.

The Energy Policy Act of 2005 (P.L. 109-58)

On June 28, 2005, the Senate approved by an 85-12 vote a broadly based energy bill (H.R. 6) with an 11-year, \$18.6 billion package of energy tax breaks tilted toward renewable energy resources and conservation. Joint Committee on Taxation figures released on June 28 show that the bill included about \$0.2 billion in non-energy tax cuts and more than \$4.7 billion in revenue offsets, meaning the bill had a total tax cut of \$18.8 billion over 11 years, offset by the \$4.7 billion in tax increases. The House energy bill, which included energy tax incentives totaling about \$8.1 billion over 11 years, and no tax increases, was approved in April. This bill was weighted almost entirely toward fossil fuels and electricity supply. On July 27, 2005, the conference committee on H.R. 6 reached agreement on \$11.1 billion of energy tax incentives, including \$3 billion in tax increases (both energy and non-energy). The distribution of the cuts by type of fuel for each of the three versions of H.R. 6 is shown in **Table 1**.

One way to briefly compare the two measures is to compare revenue losses from the energy tax incentives alone and the percentage distribution by type of incentive as a percent of the net energy tax cuts (i.e., the columns marked “%” divided by the dollar figures in row 11). The net revenue losses over an 11-year time frame from FY2005 to FY2015 were estimated by the Joint Committee on Taxation. The total revenue losses are reported in two ways. The absolute dollar value of tax cuts over 11 years and the percentage distribution of total revenue losses by type of incentive for each measure.

Table 1 shows that the conference report provided about \$1.3 billion for energy efficiency and conservation, including a deduction for energy-efficient commercial property, fuel cells, and micro-turbines, and \$4.5 billion in renewables incentives, including a two-year extension of the tax code §45 credit, renewable energy bonds, and business credits for solar. A \$2.6 billion package of oil and gas incentives included seven-year depreciation for natural gas gathering lines, a refinery expensing provision, and a small refiner definition for refiner depletion. A nearly \$3 billion coal package provided for an 84-month amortization for pollution control facilities and treatment of §29 as a general business credit. More than \$3 billion in electricity incentives leaned more toward the House version, including provisions providing 15-year depreciation for transmission property, nuclear decommissioning provisions, and a nuclear electricity production tax credit. It also provided for the five-year carryback of net operating losses of certain electric utility companies. A Senate-passed tax credit to encourage the recycling of a variety of items, including paper, glass, plastics, and electronic products, was dropped from the final version of the energy bill (H.R. 6). Instead, conferees included a provision requiring the Treasury and Energy departments to conduct a study on recycling. The House approved the conference report on July 28, 2005; the Senate on June 28, 2005, one month later on July 28, 2005, clearing it for the President’s signature on August 8 (P.L. 109-58).

Four revenue offsets were retained in the conference report: reinstatement of the Oil Spill Liability Trust Fund; extension of the Leaking Underground Storage Tank (LUST) trust fund rate, which would be expanded to all fuels; modification of the §197 amortization, and a small increase in the excise taxes on tires. The offsets total roughly \$3 billion compared with nearly \$5 billion in the Senate-approved H.R. 6. Because the oil spill liability tax and the Leaking Underground Storage Tank financing taxes are imposed on oil refineries, the oil and gas refinery and distribution sector (row 2 of **Table 1**) received a net tax increase of \$1,769 (\$2,857-\$1,088).

The Tax Relief and Health Care Act of 2006 (P.L. 109-432)

At the end of 2006, the 109th Congress enacted a tax extenders package that included extension of numerous renewable energy and excise tax provisions. Many of the renewable energy provision in this bill had already been extended under the Energy Policy Act of 2005 and were not set to expire until the end of 2007 or later. The Tax Relief and Health Care Act of 2006 provided for one-year extensions of these provisions.

Current Posture of Energy Tax Policy

The above background discussion of energy tax policy may be conveniently summarized in **Table 2**, which shows current energy tax provisions — both special (or targeted) energy tax subsidies and targeted energy taxes — and related revenue effects. A minus sign (“-“) indicates revenue losses, which means that the provision is a tax subsidy or incentive, intended to increase the subsidized activity (energy conservation measures or the supply of some alternative and renewable fuel or technology); no minus sign means that the provision is a tax, which means that it should reduce supply of, or demand for, the taxed activity (either conventional fuel supply, energy demand, or the demand for energy-using technologies, such as cars).

Note that the table defines those special or targeted tax subsidies or incentives as those that are due to provisions in the tax law that apply only to that particular industry and not to others. Thus, for example, in the case of the oil and gas industry, the table excludes tax subsidies and incentives of current law that may apply generally to all businesses but that may also confer tax benefits to it. There are numerous such provisions in the tax code; a complete listing of them is beyond the scope of this report. However, the following example illustrates the point: The current system of depreciation allows the writeoff of equipment and structures somewhat faster than would be the case under both general accounting principles and economic theory; the Joint Committee on Taxation treats the excess of depreciation deductions over the alternative depreciation system as a tax subsidy (or “tax expenditure”). In FY2006, the JCT estimates that the aggregate revenue loss from this accelerated depreciation deduction (including the expensing under IRC §179) is \$6.7 billion. A certain, but unknown, fraction of this revenue loss or tax benefits accrues to the domestic oil and gas industry, but separate estimates are unavailable. This point applies to all the industries reflected in **Table 2**.

Energy Tax Policy Outlook

After expanding energy tax incentives in the Energy Policy Act of 2005, the 109th Congress moved to rescind oil and gas incentives, and even to raise energy taxes on oil and gas, in response to the high energy prices and resulting record oil and gas industry profits. Many bills were introduced in the 109th Congress to pare back or repeal the oil and gas industry tax subsidies and other loopholes. Many of the bills focused on the oil and gas exploration and development (E&D) subsidy — expensing of intangible drilling costs (IDCs). This subsidy, which has been in existence since the early days of the income tax, is available to integrated and independent oil and gas companies, both large and small alike.³ It is an exploration and development incentive, which allows the immediate tax write-off of what economically are capital costs, that is, the costs of creating a capital asset (the oil and gas well). On September 18, 2006, Senators Wyden and Bennett introduced a bill (S. 3908) to give consumers a discount on the purchase of more fuel-efficient vehicles that would have been paid for by reducing the IDCs deduction for major integrated oil companies. Comprehensive energy legislation (S. 2829) unveiled by Senate Democrats on May 17, 2006, would not only have eliminated expensing of IDCs but also would have reduced several other tax benefits (or loopholes) to the oil and gas industry (such the foreign tax credits). The latter are not subsidies (or tax expenditures) in the strict sense of special tax measures unavailable generally, but as discussed below, some consider these unnecessary tax benefits nonetheless.⁴ H.R. 5234 focused on repealing three of the seven fossil fuel tax provisions in the 2005 act: temporary expensing of equipment costs for crude oil refining, the small refiner exception to percentage depletion, and the amortization of geological and geophysical (G&G) costs. H.R. 5218 would have denied oil and gas companies the new domestic manufacturing deduction under IRC§199.

Ultimately, only a negligible tax increase on major integrated oil companies was enacted when, on May 17, 2006, the President signed a \$70 billion tax reconciliation bill (P.L. 109-222). Under that bill, geological and geophysical (G&G) costs undertaken in exploring for oil and gas by major integrated oil companies are amortized over five years rather than two years. The two-year period was enacted under the Energy Policy Act of 2005. Prior to that, G&G costs were capitalized, which is consistent with economic and accounting theory. The 2006 change increases taxes on major integrated oil companies by an estimated \$189 million over 10 years, effectively rescinding about 20% of the nearly \$1 billion 11-year tax cut under the Energy Policy Act of 2005.

³ As is discussed later in the report, many of the other remaining tax subsidies are only available to independent oil and gas producers, which, however, may be very large.

⁴ There is an important economic distinction between a subsidy and a tax benefit. As is discussed elsewhere in this report, firms receive a variety of tax benefits that are not necessarily targeted subsidies (or tax expenditures) because they are available generally.

110th Congress

Efforts to reduce oil and gas production incentives or subsidies have continued in the 110th Congress, and are now part of comprehensive energy policy legislation. In the House, most action has focused on the Speaker's announced "Energy Independence Day" initiative (H.R. 3221), which combines bills approved by several House committees, including the energy tax provisions approved by the Ways and Means Committee H.R. 2776.

H.R. 3221 began with the CLEAN Energy Act of 2007 (H.R. 6), which was introduced by the House Democratic leadership to revise certain tax and royalty policies for oil and natural gas and to use the resulting revenue to support a reserve for energy efficiency and renewable energy. The bill was part of the House Democrats' "100 hours" package of legislative initiatives. This bill passed the House on January 18 by a vote of 264-123. In the Senate, H.R. 6 was derived mainly from S. 1419, which was itself an amalgamation of four separate energy bills. It was approved by the Senate on June 21, 2007.

In the debate over these two comprehensive energy bills, raising taxes on the oil and gas industry, by either repealing tax incentives enacted under EPACT05, by introducing new taxes on the industry, or by other means was a key objective, motivated by the feeling that additional tax incentives were unnecessary — record crude oil and gasoline prices and industry profits provides sufficient (if not excessive) incentives. On June 19, House Ways and Means Committee (W&MC) Chairman Charles Rangel introduced a \$15.2 billion package of tax credits and extensions (H.R. 2776, the Renewable Energy and Energy Conservation Tax Act of 2007) over 12 years to encourage more use of clean energy, at the expense of oil and gas producers. The committee approved the bill on June 20, 2007. The tax cuts for alternative fuels and energy conservation would be financed largely by rescinding the IRC §199 manufacturing tax deduction for oil and gas producers, which is expected to generate about \$11.4 billion in revenue.⁵ This bill was incorporated into the House's comprehensive energy policy legislation, H.R. 3221, which was approved by the House on August 4, 2007, by a vote of 221-189.

The Tax Titles of H.R. 3221, The House's Comprehensive Energy Policy Bill

Division B of H.R. 3221 includes the four tax titles, Titles XI-XIV. These energy tax provisions, which are the same as those of H.R. 2776, would essentially finance the expansion of tax subsidies for alternative (including renewable) fuels and energy conservation by raising taxes on the oil and gas industry. The major highlights of the bill are as follows.

⁵ This tax incentive, which is not technically a tax expenditure or subsidy because it is available to all domestic manufacturing firms, was enacted under the American Jobs Creation Act of 2004 (P.L. 108-357), signed on October 22, 2004.

Renewable Production Incentives.

- The bill expands the \$45 tax credits for electricity produced from renewable energy such as wind turbines, solar, biomass, geothermal, river currents, ocean tides, landfill gas, and trash combustion resources. It also extends the placed in service date by four years.
- It liberalizes the 30% investment tax credit for business solar and fuel cells, and extends the credit by eight years.
- It provides additional authority to raise the limits on a category of “Clean Renewable Energy Bonds” eligible as tax-exempt bond financing. The bill encourages the deployment of renewable energy by providing electric cooperatives and public power providers with new clean renewable energy bonds that will allow these entities to install facilities that generate electricity from renewable resources.
- It extends the biodiesel tax credits by two years and restricts the tax credits for renewable diesel. It creates a new tax credit for cellulosic ethanol and increases the number of E-85 pumps for consumers with flex-fuel vehicles.

Conservation Incentives.

- The bill adds employer-funded bicycle purchase and repair costs toward commuting expenses to the list of tax-exempt transportation fringe benefits, which are exempt from gross income.
- It creates a new tax credit for plug-in hybrids to complement the existing hybrid vehicle tax credits.
- The bill provides incentives for manufacturers to build appliances that meet or exceed Energy Star efficiency standards, and helps businesses create energy-efficient workplaces.
- It also help States leverage tax credit bonds to implement low-interest loan programs and grant programs to help working families purchase energy-efficient appliances, make energy-efficient home improvements, or install solar panels, small wind turbines, and geothermal heat pumps.

Tax Increases on the Oil and Gas Industry. To pay for these renewable energy and conservation incentives, the bill repeals approximately \$16 billion in tax breaks for oil and gas companies. More specifically, H.R. 3221:

- denies the Internal Revenue Code (IRC) §199 manufacturing deduction to major oil and gas producers. It was originally estimated to raise \$6.5 billion over 10 years but was revised in June by the Joint Committee on Taxation to \$11.4 billion over ten years. First enacted in 2004, this provision in IRC §199 allows a deduction, as

a business expense, for a specified percentage of the qualified production activity's income subject to a limit of 50% of the wages paid that are allocable to the domestic production during the taxable year. The deduction was 3% of income for 2006, is currently 6%, and is scheduled to increase to 9% when fully phased in by 2010. For the domestic oil and gas industry, the deduction applies to oil and gas or any primary product thereof, provided that such product was "manufactured, produced, or extracted in whole or in significant part in the United States." Note that extraction is considered to be manufacturing for purposes of this deduction, which means that domestic firms in the business of extracting oil and gas from underground reservoirs or deposits qualify for the deduction. This deduction was enacted under the American Jobs Creation Act of 2004 (P.L. 108-357, also known as the "JOBS" bill). It was originally a substitute for repeal of the export tax benefits under the extra-territorial income tax exclusion, which was ruled to be in violation of trade laws;⁶

- restricts the ability of major oil and gas companies to claim tax credits for taxes and other payments to foreign governments against the U.S. tax on foreign source income;
- amortizes geological and geophysical costs over seven years instead of the current five years for the major integrated oil companies; and
- closes the "Hummer" Tax Loophole, that provides an extra depreciation tax incentive for businesses buying luxury SUVs, while exempting vehicles that are used for legitimate business purposes.

The Senate Finance Committee's Energy Tax Bill

On the Senate side, the Senate Finance Committee's (SFC) energy tax bill (the Energy Advancement and Investment Act) proposes a \$32 billion tax cut for alternative fuels and energy conservation, more than double the size of the W/M bill, to be offset by \$32.2 billion of tax increases primarily on the domestic oil and gas industry, including \$4 billion of taxes from disallowing losses on abusive SILO (sale-in, lease out) transactions, and by several other relatively minor tax increases. The proposed tax increases on the domestic oil and gas industry total nearly \$27 billion over ten years and account for about 83% of the tax increases. Like the W/M bill, the SFC bill would rescind the IRC §199 manufacturing tax deduction for oil and gas producers, although the Senate bill applies only to the major integrated producers while in the House bill it applies to all oil and gas producers. The SFC bill also funds the additional tax cuts for alternative fuels and energy conservation by a doubling of the oil spill liability excise tax (from 5¢/ barrel to 10¢/barrel) and by imposition of a new excise tax — at 13% of the price — on oil and gas produced from federal lands in the Gulf of Mexico. This severance tax provision is not in H.R. 3221, but a similar

⁶ CRS Report RL32652, *The 2004 Corporate Tax and FSC/ETI Bill: The American Jobs Creation Act of 2004*, by David L. Brumbaugh. January 26, 2006.

tax increase was added to the farm bill (H.R. 2419) approved by the House on July 26. This tax increase, which is called a “conservation of resources fee” in the bill but is no different from a tax, is a unit tax of \$9/barrel of oil and \$1.25/million Btus of gas applicable to all oil and gas produced pursuant to federal leases in the Gulf of Mexico.

There are many other differences between the two bills. At half the size of the \$32 billion SFC bill, the W/M bill forgoes some of the tax incentives for the production of energy from wind, hydroelectric power, biomass, or clean coal technologies that are in the SFC bill. The SFC bill was the energy tax title to the Senate’s version of comprehensive energy legislation (H.R. 6) and was reported by the Committee on June 19, 2007, but failed a procedural vote to limit debate (cloture) when it was on the Senate floor. The SFC reported bill was not numbered, but was Senate Amendment 1704 to Senator Reid’s Substitute Amendment 1502 to H.R. 6, which was approved by the House on January 18, 2007, and by the Senate on June 21, 2007.

Likely Effects on Oil and Gas Prices and Oil Import Dependence

In general, for reasons explained more fully below, none of the oil and gas tax provisions listed above are expected to have significant price effects, either on crude oil or natural gas prices, or refined petroleum product prices, such as pump prices. The market price of crude oil and natural gas, or even of refined petroleum products, such as gasoline, would not be expected to increase very much, if at all. In general, also, the income tax increases are not expected to have real output effects in the short run, although they will cause resources to flow to other industries in the long run as long as these other industries are allowed the manufacturing deduction, which is equivalent to a lower marginal tax rate.

With regards to the excise tax increases and gasoline tax reforms in the SFC bill, economic theory suggests that the oil spill tax will have price effects, but, based on the relative magnitude of the proposed increase, which is quite small, these are projected to be negligible. Neither the gasoline tax proposal nor the proposed 13% severance tax are expected to have price effects, the former because it is a change in the gasoline tax collection point rather than a tax increase, and the latter because crude oil prices are determined in the world oil market rather than in the United States. However, as is discussed more fully below, the proposed 13% severance tax in the SFC bill (or the farm bill version of this tax, the so-called “conservation of resources fee”) will likely reduce output of domestic oil and increase dependence on imports.

Neutrality of the Corporate Income Tax

Two of the provisions in both the W&MC and SFC energy tax bills constitute increases in the corporate income tax and would raise a substantial fraction of the revenues from increased taxation of the oil and gas industry. The larger of the two

would rescind an income tax cut enacted nearly three years ago; the second would raise U.S. tax on foreign-source oil and gas income by limiting the foreign tax credit.

One of the biggest revenue raisers in both bills is the provision denying the §199 manufacturing deduction to major oil producers. First enacted in 2004, this provision in IRC §199 allows a deduction, as a business expense, for a specified percentage of the qualified production activity's income subject to a limit of 50% of the wages paid that are allocable to the domestic production during the taxable year. The deduction was 3% of income for 2006, is currently 6%, and is scheduled to increase to 9% when fully phased in by 2010. For the domestic oil and gas industry, the deduction applies to oil and gas or any primary product thereof, provided that such product was "manufactured, produced, or extracted in whole or in significant part in the United States." Note that extraction is considered to be manufacturing for purposes of this deduction, which means that domestic firms in the business of extracting oil and gas from underground reservoirs or deposits qualify for the deduction. This deduction was enacted under the American Jobs Creation Act of 2004 (P.L. 108-357, also known as the "JOBS" bill). It was originally a substitute for repeal of the export tax benefits under the extra-territorial income tax exclusion, which was ruled to be in violation of trade laws.⁷

To understand why repealing this deduction, whether for oil and gas or any other industry, would not likely have price effects, note that the deduction is effectively equivalent to a reduction in the marginal income tax rate. For example, at the marginal corporate tax rate of 35%, which typically applies to large corporations such as oil and gas producers and refiners, the current deduction of 6% is equivalent to a marginal corporate income tax rate of 32.9% ($35\% \times 0.94$) rather than 35%.⁸ The proposed elimination of this deduction is, thus, equivalent to an increase in the marginal tax rate from 32.9% to 35% for those major oil companies to which this would apply. All other large corporations would continue to face a top marginal tax rate of 32.9%, with the exception of non-manufacturing enterprises (services, for example), which do not qualify for the §199 deduction.

From an economic perspective, that is to say, in theory, increasing marginal tax rates on corporate income would be relatively neutral in the short run — it would have no (or few) price effects and other economic effects. The reason for this is that a firm maximizes profit at the point at which market prices are equal to marginal production costs, and neither are affected by an increase in marginal tax rates — the profit maximizing level of output and price are unaffected by the tax. Thus, while eliminating the deduction — that is to say, raising the corporate tax rate — would increase total (or average) business costs and therefore reduce profitability among the major oil and gas producers, as long as marginal production costs are unaffected, there would be no price effects *in the short run*. Note also that while the current corporate income tax is not a pure corporate profits (or cash-flow) tax, a surtax for

⁷ CRS Report RL32652, *The 2004 Corporate Tax and FSC/ETI Bill: The American Jobs Creation Act of 2004*, by David L. Brumbaugh.

⁸ Corporations are currently taxed at 15% of the first \$50,000 of taxable income, 25% of the taxable income from \$50,001 to \$75,000, 34% of the taxable income from \$75,001 to \$10 million, and 35% of taxable income above \$10 million.

oil companies would arguably be an administratively simple and economically effective way to capture any oil windfalls in the short run.

In the long run, however, all taxes distort resource allocation, and even a corporate profit tax (either of the pure type or the surtax on the existing rates) would reduce the rate of return and reduce the flow of capital into the industry. In the long run, eliminating the deduction for the domestic oil and gas industry will raise average production costs, adversely affecting the economics of domestic oil and gas projects as compared to domestic non-oil and gas projects. Generally, rates of return to investments in oil and gas would decline, causing a decline in capital flows to this industry, and an increase in capital flowing to other industries, including foreign industries. This would tend to adversely affect domestic production and increase imports: Domestic oil and gas output would be lower, and imports would be higher than they otherwise would be without the tax increase. However, because of the structure of the world oil market, market oil prices are exogenous to U.S. producers (and gas prices tend to follow market oil prices), even these longer term effects are not likely to affect oil and gas prices. Also, the retail price of refined petroleum products, such as gasoline, to consumers is determined by a complex interplay of world supply and demand market variables rather than a domestic corporate tax increase.

As to the restrictions to the foreign tax credits, this proposal would also be effectively an increase in the corporate income tax on domestic oil and gas producers operating abroad. Again, owing to the structure of the world oil market and how crude prices are determined in this market, there are likely to be few price effects either in the short or long run. However, raising domestic income taxes by restricting the industry's ability to claim credits against the income taxes imposed by foreign countries might negatively affect the competitiveness of the domestic U.S. oil producers operating abroad and competing with foreign firms that would not have such restrictions.

Proposed Increases in Excise Taxes

Unlike corporate income taxes, excise taxes, such as crude oil taxes imposed on all crude oil purchases or gasoline taxes, would raise marginal production costs, and thus would generally tend to raise prices, reduce output, or both. Of the three proposed excise tax provisions in the SFC bill, however, there is a distinction between the effects of oil spill and gasoline tax proposals, and the effects of the severance tax proposal.

The Oil Spill Tax. The oil spill liability trust fund tax is an excise tax on crude oil purchased or used by a refinery as well on petroleum product imports. This tax, which is currently 5¢ per barrel, was reinstated by the Energy Policy Act of 2005 (P.L. 109-58) after a ten-year lapse. The SFC proposal would be a simple doubling in the per barrel tax from 5¢ to 10¢. Whether the oil is produced domestically or imported, all such crude oil purchased by refineries would be taxed at twice the rate, thereby increasing the marginal production costs — the costs of refining petroleum products — and raising the price of all petroleum products. However, the proposed tax increase of 5¢/barrel of crude oil is such a small increase — amounting to just

over 1/10 of 1¢ per gallon of refined products — that it would be difficult to detect and measure in a petroleum products market as large as that in the United States.

Gasoline Tax Collection Point. Likewise, increases in taxes on gasoline and other motor fuels would, depending on the amount of the tax increase, and the market response to that increase (e.g., the price elasticities of the supply and demand for gasoline), tend to raise the price of the taxed fuel and reduce consumption and output of the taxed fuel. However, the SFC proposal is to eliminate or repeal the current bulk transfer exception to the gasoline tax collection system, a feature that essentially allows finished gasoline to move by pipeline or barge from the refiner or importer tax-free until it gets to the terminal operator. Currently, refiners are generally permitted to ship gasoline by pipeline or barge to terminals for ultimate distribution to wholesalers or retailers tax-free. Essentially this means that the gasoline tax is imposed at the terminal when the product breaks bulk. Under the proposed change, the 18.4¢ tax on finished gasoline would be imposed at the refinery gate (for domestically refined product) or on its entry into the United States, and thus is fundamentally a change in the gasoline tax collection point, rather than an increase in the gasoline tax per se. Repealing the bulk transfer exception to the gasoline tax means essentially that refiners and importers would not be able to ship finished motor gasoline in bulk to terminals or other points of distribution without tax. This would accelerate the payment of the existing 18.4¢/gallon tax on finished motor gasoline, and might be an administrative burden on refiners, as well. It might also reduce tax evasion, which is perhaps the source of the estimated \$824 million in additional revenues over 10 years. However, since it is not an increase in the gasoline tax, which would remain at 18.4¢/gallon, it should not lead to an increase in gasoline prices.

Proposed New 13% Severance Tax on OCS Oil and Gas. The SFC energy tax bill also includes a proposed 13% new excise tax on the price of all oil and gas produced from the federal outer continental shelf in the Gulf of Mexico (GOM). Any royalties paid on such oil and gas would be fully creditable against this new tax, up to 13%. Thus, an operator paying a 1/6th royalty (16⅔%) would be assessed a 13% excise tax but 13 percentage points of the royalty would be creditable against the tax, and the net excise tax would be zero. An operator paying a 1/8th royalty (12.5%) would be assessed a 13% tax and 12.5% would be creditable against it, for a net tax increase of 0.5%. However, because both the royalty and the excise tax would be deductible against income taxes, the net tax increase would be 0.335% (0.5×0.671).⁹ An operator that would otherwise pay no royalty because the leases were so drawn up and agreed to would be assessed a 13% excise tax and receive no credit. Royalty free oil production from the GOM is a small fraction of the total GOM oil production, but royalty free gas production is estimated at nearly 1/3 of total GOM production.¹⁰ And given the recent high market prices of oil and natural gas,

⁹ That is, the net tax increase, after income taxes, would be $(1-t) \times 0.5$, where t is the marginal statutory tax rate, currently 32.9% because of the 6% manufacturing deduction. If the manufacturing deduction is repealed, then the net tax increase on production from the leases that are currently not paying a royalty rate would actually be less: 0.325% (0.5×0.65) instead of 0.335%.

¹⁰ Executive Office of the President. *2007 President's Budget Federal OCS Production and* (continued...)

the foregone royalty revenues have been quite large, estimated at about \$1 billion so far. The 13% excise tax would also be deductible against the income tax, so that the after-tax liability would be currently 8.723% (or 8.45% with the repeal of the manufacturing deduction).

Regardless of how operators respond to such a proposed tax — that is, whether non-royalty payers would elect to renegotiate their leases and agree to pay a royalty — the tax itself cannot be shifted because it is imposed only on domestic output, and not imported oil, the marginal source of oil for the United States. As long as a significant fraction of the available oil and gas is not subject to tax, the world market price of oil and gas cannot increase. However, as before, the tax eventually would tend to reduce output of oil and gas from the OCS, which would tend to increase imports unless aggregate demand for oil and gas in the United States could be curtailed. This would tend to make the U.S. more dependent on imports.¹¹

Energy Tax Incentives in the Farm Bill

Due to contentious issues such as Corporate Average Fuel Economy standards, renewable fuel standards, renewable portfolio standards, and tax increases on oil and gas, the outlook for establishing a conference for the comprehensive energy policy bill and getting a bill approved before year end is not favorable. Thus, the Senate has taken action to incorporate many of the energy tax incentives both in H.R. 3221 and in the failed SFC energy tax bill into its version of the farm reauthorization legislation H.R. 2419. The Senate's substitute amendment, which includes the Senate Agriculture Committee's Farm Bill and the SFC approved \$17 billion tax package, also include \$2.5 billion of expanded energy tax incentives and \$1.2 billion of reduced energy tax incentives (both over ten years). The new or expanded energy tax incentives of the Senate's version of H.R. 2419, those projected to lose federal tax revenues, are as follows:

- *Small Wind Power Credit*: The proposal creates a new 30% credit for small (100 kilowatts or less) residential and commercial wind property, capped at \$4,000 per year. The cost is \$5 million over 10 years;
- *Transmission Pole Payment Exemption*: Easement payments generally must be included in a taxpayer's income for federal income tax purposes. The proposal allows taxpayers who locate an electricity transmission pole on a line of 230 kilovolts or more to exempt easement payments received from the electric utility or electric transmission company from gross income. The cost is \$91 million over 10 years;

¹⁰ (...continued)

Royalty Revenue Projections. November 22, 2005.

¹¹ The economic effects of the proposed severance tax would, in its effects on prices and imports, be quite similar to the effects of the crude oil windfall profits tax that was in effect in the United States from 1980 to 1988. See CRS Report RL33305, *The Crude Oil Windfall Profits Tax of the 1980s: Implications for Current Energy Policy*, by Salvatore Lazzari.

- *Small Producer Credit for Cellulosic Alcohol:* The proposal creates a new production tax credit for cellulosic alcohol of 50¢ per gallon (in addition to the current 51¢/gallon credit and 10¢/gallon credit) for up to 60 million gallons of cellulosic fuel production in a taxable year. The cost is \$1,079 million over 10 years;
- *Expand Expensing for Cellulosic Ethanol Facilities:* The proposal expands the eligible property qualifying for the 50% expensing to include alcohol produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. Cost is \$1 million over 10 years;
- *Small Ethanol Producer Credit:* The proposal extends for two years (through December 31, 2012) the 10¢ per gallon tax credit on the first 15 million gallons of ethanol production for producers with annual capacity of not more than 60 million gallons. Cost is \$172 million over 10 years;
- *Fossil-Free Alcohol Production Credit:* The proposal creates a new small producer alcohol credit of 25¢ per gallon for facilities that produce ethanol through a process that does not use a fossil-based resource available through December 31, 2012. Cost is \$211 million over 10 years;
- *Biodiesel Tax Credits:* Extends for two years (through December 31, 2010) the \$1.00 and 50¢ production tax credits for biodiesel. Extends for four years (through December 31, 2012) the 10¢ per-gallon tax credit on the first 15 million gallons of biodiesel production for producers with annual capacity of not more than 60 million gallons. Cost is \$267 million over 10 years;
- *Renewable Diesel Incentives:* Extends for two years (through December 31, 2010) the \$1 tax credit for diesel created through a thermal depolymerization process and caps, on a per facility basis, the \$1 credit at 60 million gallons per year. Cost is \$211 million over 10 years;
- *Alternative Fuels Excise Tax Credit:* The proposal modifies the credit to include biomass-gas-based versions of liquefied petroleum gas and liquefied or compressed natural gas. Cost is \$332 over 10 years;
- *IRC §45 Production Tax Credit Exception:* Present law requires a reduction in the IRC §45 production tax credit for renewable electricity for grants, tax-exempt bonds, subsidized energy financing, and other credits. The proposal provides an exception to this general rule for any financing to farmers, ranchers, or rural small businesses issued by the Secretary of Agriculture under authority granted by Section 9006 of the Farm Security and Rural Investment Act of 2002. The cost is \$14 million over 10 years;

- *Alternative Refueling Station Tax Credit*: The proposal extends the 30% alternative refueling property credit (capped at \$30,000) for non-hydrogen property for one year (through December 31, 2010). Cost is \$119 million over 10 years.

The energy tax incentives of the Senate's version of H.R. 2419, that are projected to increase federal tax revenues, those that are being cut back, are as follows:

- *Volumetric Ethanol Excise Tax Credit*. The proposal reduces the 51¢/per-gallon tax credit for ethanol by 5¢ beginning with the first calendar year after the year in which 7.5 billion gallons of ethanol (including cellulosic ethanol) have been produced. The proposal is effective on the date of enactment. The proposal is estimated to raise \$854 million over ten years;
- *Exclusion of Denaturant from Alcohol Fuels Credit*. The proposal excludes all but two percent of the volume of denaturant (a substance used to render alcohol toxic or undrinkable) in the fuel for purposes of calculating the volume of alcohol eligible for the alcohol fuels credit. The proposal is effective January 1, 2008. The proposal is estimated to raise \$284 million over ten years;
- *Extension of Tariff on Ethanol*. The proposal extends the tariff on imported ethanol for two years (through December 31, 2010). The proposal is effective on the date of enactment. The proposal is estimated to raise \$25 million over ten years;
- *Duty Drawback on Imported Ethanol*. Present law allows duties paid upon import to be reclaimed at a later date if the same or similar product is exported. Current law treats ethanol blended with gasoline the same as jet fuel. The proposal terminates that treatment. Any drawback for ethanol or ethanol blended with gasoline is still allowed. The proposal is estimated to raise \$10 million over ten years (estimate subject to change by the Congressional Budget Office);
- *Treatment of Alcohol and Biodiesel Fuel Mixtures*. The proposal adds qualified alcohol fuel mixtures and qualified biodiesel fuel mixtures to the definition of taxable fuel. In addition, the proposal requires additional reporting by the registered blender and documentation of the ASTM standard. The proposal is effective for fuels removed, entered, or sold after December 31, 2007. The proposal is estimated to raise \$2 million over ten years.

For Additional Reading

U.S. Congress, Senate Budget Committee, *Tax Expenditures: Compendium of Background Material on Individual Provision*, Committee Print, December 2006, 109th Cong., 2nd sess.

U.S. Congress, Joint Tax Committee, “*Description of the Tax Provisions in H.R. 2776, The Renewable Energy and Energy Conservation Tax Act of 2007*,” June 19, 2007 (JCX-35-07).

U.S. Congress, Joint Tax Committee, “*Description of the Chairman’s Modification to the Provisions of the Energy Advancement and Investment Act of 2007*,” June 19, 2007 (JCX-33-07).

U.S. Congress, Joint Tax Committee, *Description And Technical Explanation of the Conference Agreement of H.R. 6, Title XIII, “Energy Tax Policy Tax Incentives Act of 2005*,” July 27, 2005.

CRS Report RS21935, *The Black Lung Excise Tax on Coal*, by Salvatore Lazzari.

CRS Report RL33302, *Energy Policy Act of 2005: Summary and Analysis of Enacted Provisions*, by Mark Holt and Carol Glover.

CRS Report RL30406, *Energy Tax Policy: An Economic Analysis*, by Salvatore Lazzari.

CRS Report RS22344, *The Gulf Opportunity Zone Act of 2005*, by Erika Lunder.

CRS Report RL33763, *Oil and Gas Tax Subsidies: Current Status and Analysis*, by Salvatore Lazzari.

CRS Report RS22558, *Tax Credits for Hybrid Vehicles*, by Salvatore Lazzari.

CRS Report RS22322, *Taxes and Fiscal Year 2006 Reconciliation: A Brief Summary*, by David L. Brumbaugh.

Table 1. Comparison of Energy Tax Provisions the House, Senate, and Enacted Versions of H.R. 6 (P.L.109-58): 11-Year Estimated Revenue Loss by Type of Incentive
(in millions of dollars; percentage of total revenue losses)

	House H.R. 6		Senate H.R. 6		P.L. 109-58	
	\$	%	\$	%	\$	%
INCENTIVES FOR FOSSIL FUELS SUPPLY						
(1) Oil & Gas Production	-1,525	18.9%	-1,416	7.6%	-1,132	7.8%
(2) Oil & Gas Refining and Distribution	-1,663	20.6%	-1,399	7.5%	-1,501	10.4%
(3) Coal	-1,490	18.4%	-3,003	16.2%	-2,948	20.3%
(4) Subtotal	-4,678	57.8%	-5,818	31.3%	-5,581	38.6%
ELECTRICITY RESTRUCTURING PROVISIONS						
(5) Nuclear	-1,313	16.2%	-278	1.5%	-1,571	10.9%
(6) Other	-1,529	18.9%	-475	2.6%	-1,549	10.7%
(7) Subtotal	-2,842	35.1%	-753	4.1%	-3,120	21.6%
INCENTIVES FOR EFFICIENCY, RENEWABLES, AND ALTERNATIVE FUELS						
(8) Energy Efficiency	-570	7.0%	-3,987	21.4%	-1,260	8.7%
(9) Renewable Energy & Alternative Fuels	0	0%	-8,031	43.2%	-4,500	31.1%
(10) Subtotal	-570	7.0%	-12,018	64.6%	-5,760	39.8%
(11) Net Energy Tax Cuts	-8,010	100%	-18,589	100%	-14,461	100.0%
(12) Non Energy Tax Cuts ^a	0		-213		-92	
(13) Total Energy and Non-Energy Tax Cuts	0		-18,802		-14,553	
(14) Energy Tax Increases ^b	0		0		+2,857	
(15) Other Tax Increases			+ 4,705		171	
(16) NET TAX CUTS	-8,010		-14,055		-11,525	

Source: CRS estimates based on Joint Tax Committee reports.

- a. The conference report includes a provision to expand R&D for all energy activities. This provision is listed as a nonenergy tax cut to simplify the table.
- b. Energy tax increases comprise the oil spill liability tax and the Leaking Underground Storage Tank financing rate, both of which are imposed on oil refineries. If these taxes are subtracted from the tax subsidies (row 2), the oil and gas refinery and distribution sector suffered a net tax increase of \$1,356 (\$2,857-\$1501); if the taxes are subtracted from all of the industry's tax subsidies (rows 1 and 2), the industry experienced a net tax increase of \$224 million (\$2,857-\$2,633). Also, the Tax Increase Prevention and Reconciliation Bill of 2006 (P.L. 109-222), enacted on May 17, 2006, increased taxes on the oil industry by about \$189 million.

**Table 2. Current Energy Tax Incentives and Taxes:
Estimated Revenue Effects FY2006**
(in millions of dollars)

Category	Provision	Major Limitations	Revenue Effects FY2006
CONVENTIONAL FOSSIL FUELS SUPPLY (bpd = barrels per day; < indicates less than)			
Targeted Tax Subsidies			
disposition of electricity transmission property to implement FERC policy	capital gain recognized evenly over 8 years	proceeds must be reinvested in other electricity generating assets	- 600
% depletion — oil, gas, and coal	15% of sales (higher for marginal wells); 10% for coal	only for independents, up to 1,000 or equiv. bpd	- 1,100
expensing of intangible drilling costs (IDCs) and amortization of exploration and development costs — oil/gas and other fuels	100% deductible IDCs in first year/ 2 year amortization of geological and geophysical costs	corporations expense only 70% of IDCs	- 1,100 ^a
expensing of refinery investments	deduction of 50% of the cost of qualified refinery property, in the taxable year in which the refinery is placed in service	must increase the capacity of an existing refinery by 5%; remaining 50% is depreciated; must be placed in service before January 1, 2012	- 26

Category	Provision	Major Limitations	Revenue Effects FY2006
Tax Credits for Enhanced Oil Recovery Costs (EOR)	IRC §43 provides for a 15% income tax credit for the costs of recovering domestic oil by qualified “enhanced-oil-recovery” (EOR) methods, to extract oil that is too viscous to be extracted by conventional primary and secondary water-flooding techniques.	The EOR credit is non refundable, and is allowable provided that the average wellhead price of crude oil (using West Texas Intermediate as the reference), in the year before credit is claimed, is below the statutorily established threshold price of \$28 (as adjusted for inflation since 1990), in the year the credit is claimed. With average wellhead oil prices for 2005 (about \$65) well above the reference price (about \$38) the EOR credit was not available.	0
Marginal Production Tax Credit	A \$3 tax credit is provided per barrel of oil (\$0.50 per thousand cubic feet (mcf)) of gas from marginal wells, and for heavy oil.	The credit phases out as oil prices rise from \$15 to \$18 per barrel (and as gas prices rise from \$1.67 to \$2.00/thousand cubic feet), adjusted for inflation. The credit is limited to 25 bpd or equivalent amount of gas and to 1,095 barrels per year or equivalent. Credit may be carried back up to 5 years. At 2005 oil and gas prices, the marginal production tax credit was not available.	0
nuclear decommissioning	liberalizes tax deductible contributions to a fund in advance of actual decommissioning	in general, the IRS sets limits on the annual amounts made to a nuclear decommissioning fund	- 120

Category	Provision	Major Limitations	Revenue Effects FY2006
electric utilities	allows net-operating losses (NOLs) to be carried back 5 years, as compared with 2 years for all other industries	only 20% of the NOLs in 2003-2005 qualify	-72
incentives for small refiners to comply with EPA sulfur regulations	\$2.10 credit per barrel of low-sulfur diesel, plus expensing of 75% of capital costs	credit limited to 25% of capital costs; expensing phases out for refining capacity of 155,000-205,000 barrels per day.	- < 50
credit for clean-coal technologies	20% for integrated gasification combined cycle (IGCC) systems; 15% for other advanced coal technologies	each system has maximum aggregate dollar limits	- 26
Targeted Taxes			
black-lung coal excise taxes and abandoned mineland reclamation (AML) fees	\$1.25/ton for underground coal (\$0.90 for surface coal)	coal tax not to exceed 4.4% of sales price (2.2% for the AML fee)	789
oil spill liability trust fund excise tax	\$0.05/barrel tax on every barrel of crude oil refined	moneys are allocated into a fund for cleaning up oil spills	150
ALTERNATIVE, UNCONVENTIONAL, AND RENEWABLE FUELS			
Targeted Tax Subsidies			
§29, production tax credit	\$6.40/bar. of oil or (\$1.13/mcf of gas)	biogas, coal syngases, coalbed methane, etc.	- 2,700
credits for fuel ethanol	\$0.51 blender's credit, plus \$0.10/gal small producer credit	for biomass ethanol only (e.g., from corn)	- 1,890
tax credit for clean-fuel refueling property	\$30,000 tax credit for alternative fuel equipment	per location, per taxpayer (replaces a deduction)	- < 50
§45 credit for renewable electricity	1.8¢/kWh. (0.9¢ in some cases; \$4.375/ton of refined coal)	wind, closed-loop biomass, poultry waste, solar, geothermal, etc.	- 900

Category	Provision	Major Limitations	Revenue Effects FY2006
alternative fuel motor vehicle (AFV) tax credits	\$400-\$40,000 credit for each fuel cell, hybrid, lean burn and other AFVs	tax credit is function of vehicle weight, fuel economy, and lifetime fuel savings	- 283
exclusion of interest on State & Local bonds	interest income exempt from tax	for hydroelectric or biomass facilities used to produce electricity	- 100
credits for biodiesel	\$0.50/gal. of recycled biodiesel; \$1.00/gal. for virgin biodiesel	sold at retail or used in a trade or business; applies to oils from vegetables or animal fats	- 122
credit for solar & geothermal tech.	10% investment tax credit for businesses	utilities excluded	- < 50
ENERGY CONSERVATION			
Targeted Subsidies			
mass transit subsidies	exclusion of \$105/month		- 192
manufacturer's credit for energy efficient appliances	max credit is \$50 for dishwashers, \$175 for refrigerators, and \$200 for clothes washers	amount of credit depends on energy efficiency, energy savings, and varies by year; total annual credit is also limited	- 117
deduction for the cost of energy efficient property in commercial buildings	tax deduction of cost of envelope components, heating cooling systems, and lighting	total deductions cannot exceed \$1.80/sq.ft.	- 81
credit for energy efficiency improvements to existing homes	10% tax credit (\$500/home) on up to \$5,000 of costs; \$50-\$300 credit for other items	max credit on windows is \$200	- 55
Targeted Taxes			
fuels taxes (FY2005)	18.4¢/gal. on gasoline	4.4¢-24.4¢ for other fuels	34,870
gas-guzzler tax (FY2005)	\$1,000-\$7,700/vehicle weighing 6,000 lbs. or less	trucks and SUVs are exempt	160

Category	Provision	Major Limitations	Revenue Effects FY2006
exclusion for utility conservation subsidies	subsidies not taxable as income	any energy conservation measure	< - 50

Source: Joint Tax Committee estimates and Internal Revenue Service data.

Notes: A negative sign indicates a tax subsidy or incentive; no negative sign indicates an energy tax. NA denotes not available.

- a. The revenue loss estimate excludes the benefit of expensing costs of dry tracts and dry holes, which includes expensing some things that would otherwise be capitalized. This is a normal feature of the tax code but confers special benefits on an industry where the cost of finding producing wells includes spending money on a lot that turn out dry. This is probably more important than IDCs or percentage depletion.