Side-by-Side Comparison of Energy Tax Provisions of H.R. 6899 and S. 3478

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Summary

The Comprehensive American Energy Security and Consumer Protection Act, H.R. 6899, was introduced on September 15, 2008, and approved by the House on September 16, 2008. This plan allows oil and gas drilling in the Outer Continental Shelf (OCS), and it incorporates most of the energy tax provisions from an energy tax bill, H.R. 5351, and some of H.R. 6049, both of which were previously approved by the House of Representatives but failed to be taken up by the Senate.

In the Senate, legislative efforts on energy tax incentives and energy tax extenders center around S. 3478, the $40 billion energy tax bill offered by Finance Committee Chairman Max Baucus and ranking Republican Charles Grassley, and supported by Senate Democratic leadership. In the Senate, controversy over tax increases on the oil and gas industry, particularly over proposed repeal of the tax code's §199 deduction for the major integrated oil companies, continues; it remains unclear whether an energy tax bill with this provision will pass a cloture vote to limit debate, and thus be taken up.

This report is a side-by-side comparison of energy tax bills H.R. 6899 and S. 3478.

Contents

Tables

Contacts

The idea of using the tax code to achieve energy policy goals and other national objectives is not new but, historically, U.S. federal energy tax policy promoted the exploration and development—the supply of—oil and gas. 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oil and gas industry's tax preferences, (2) the imposition of new excise taxes on oil (some of which were subsequently repealed or expired), and (3) the introduction of numerous tax preferences for energy conservation, the development of alternative fuels, and the commercialization of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).

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, as well as for energy efficiency, and 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 some of these provisions. But some of these energy tax incentives expired on January 1, 2008, while others are about to expire at the end of 2008.

In early December 2007, it appeared that congressional conferees had reached agreement on another comprehensive energy bill, the Energy Independence and Security Act (H.R. 6), and particularly on the controversial energy tax provisions. The Democratic leadership in the 110th Congress proposed to eliminate or reduce tax subsidies for oil and gas and use the additional revenues to increase funding for their energy policy priorities: energy efficiency and alternative and renewable fuels, that is, reducing fossil fuel demand rather than increasing energy (oil and gas) supply. In addition, congressional leaders wanted to extend many of the energy efficiency and renewable fuels tax incentives that either had expired or were about to expire.

The compromise on the energy tax title in H.R. 6 proposed to raise taxes by about $21 billion to fund extensions and liberalization of existing energy tax incentives. However, the Senate on December 13, 2007, stripped the controversial tax title from its version of the comprehensive energy bill (H.R. 6) and then passed the bill, 86-8, leading to the President's signing of the Energy Independence and Security Act of 2007 (P.L. 110-140), on December 19, 2007. The only tax-related provisions that survived were (1) an extension of the Federal Unemployment Tax Act surtax for one year, raising about $1.5 billion; (2) higher penalties for failure to file partnership returns, increasing revenues by $655 million; and (3) an extension of the amortization period for geological and geophysical expenditures from five to seven years, raising $103 million in revenues. The latter provision was the only tax increase on the oil and gas industry in the final bill. Those three provisions would offset the $2.1 billion in lost excise tax revenues going into the federal Highway Trust Fund as a result of the implementation of the revised Corporate Average Fuel Economy standards. The decision to strip the much larger $21 billion tax title stemmed from a White House veto threat and the Senate's inability to get the votes required to end debate on the bill earlier in the day. Senate Majority Leader Harry Reid's (D-Nev.) effort to invoke cloture fell short by one vote, in a 59-40 tally.

Since then, the Congress has tried several times to pass energy tax legislation, and thus avoid the impending expiration of several popular energy tax incentives, such as the "wind" energy tax credit under Internal Revenue Code (IRC) §45, which, since its enactment in 1992, has lapsed three times only to be reinstated.[1] Several energy tax bills have passed the House but not the Senate, where on several occasions, the failure to invoke cloture failed to bring up the legislation for consideration. Senate Republicans objected to the idea of raising taxes to offset extension of expiring energy tax provisions, which they consider to be an extension of current tax policy rather than new tax policy. In addition, Senate Republicans objected to raising taxes on the oil and gas industry, such as by repealing the (IRC) §199 deduction, and by streamlining the foreign tax credit for oil companies.[2] The Bush Administration repeatedly threatened to veto these types of energy tax bills, in part because of their proposed increased taxes on the oil and gas industry. Frustrated with the lack of action on energy tax legislation over the last two years, House Democrats introduced and approved several such bills, such as H.R. 5351, which was approved by the House on February 27, 2008. House Speaker Pelosi and other Democrats sent President Bush a letter February 28, 2008, urging him to reconsider his opposition to the Democratic renewable energy plan, arguing that their energy tax plan would "correct an imbalance in the tax code."[3]

At this writing, a renewed legislative effort is being made to enact energy tax legislation, although the two chambers were moving in different directions on how to bring the legislation to the floor. In the House, energy tax provisions are part of H.R. 6899, House Democratic leadership's latest draft of broad-based energy policy legislation, the Comprehensive American Energy Security and Consumer Protection Act. Passed on September 16, 2008, the bill would expand oil and gas drilling offshore by allowing oil and gas exploration and production in areas of the outer continental shelf that are currently off limits, except for waters in the Gulf of Mexico off the Florida coast. Under the bill, states could allow such drilling between 50 and 100 miles offshore, while the federal government could permit drilling from 100 to 200 miles offshore.[4] Revenue from the new offshore leases would be used to assist the development of alternative energy, and would not be shared by the adjacent coastal states. The bill would also repeal the current ban on leasing federal lands for oil shale production if states enact laws providing for such leases and

[1] See. U.S. Library of Congress. Congressional Research Service. *Extension of Expiring Energy Tax Provisions.* CRS Report RL32265 by (name redacted).

[2] Enacted in 2004 as an export tax incentive, this provision allows a deduction, as a business expense, for a specified percentage of the qualified production activity's income (or profit) 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.

[3] Several times the House has approved energy tax legislation, and several times in the Senate such legislation failed a cloture vote and thus could not be brought to the floor for debate. The latest was H.R. 6049, the House tax extenders bill, which was approved by the House on May 21, 2008, but failed three cloture votes in the Senate. Several times recently, the Senate has been prevented from taking action on energy tax legislation due to the failure to invoke cloture on the motion to proceed to the House energy tax extenders bills. The first was June 10, when the motion failed by a vote of 50-44; the second was on June 17, when the motion failed by a vote of 52-44; the third was July 29, when the cloture motion failed by a vote of 53 to 43. In addition, on July 30 the Senate rejected by a vote of 51 to 43 a motion to invoke cloture on a motion to proceed to debate S. 3335, Senator Baucus' energy tax bill.

[4] The House Democratic leadership's energy proposal is centered around opening the Outer Continental Shelf to oil and gas development. The OCS areas—the Atlantic OCS, Gulf of Mexico (GOM) OCS, Pacific OCS, and Alaska OCS—are the offshore lands under the jurisdiction of the U.S. government. Federal law allows or confirms state boundaries and jurisdiction over the continental shelf areas up to 3 nautical miles from the coastline, except that (in the GOM) Texas and Florida offshore boundaries extend up to 9 nautical miles from the coastline. Exclusive federal jurisdiction over resources of the shelf applies from state boundaries out to 200 miles from the U.S. coastline. For a more detailed definition of the OCS and various governmental jurisdictions see U.S. Library of Congress. Congressional Research Service. CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by (name redacted). May 3, 2006. For a comparison of different proposals see U. S. Library of Congress. Congressional Research Service. CRS Report RL34667, *Outer Continental Shelf Leasing: Side-by-Side Comparison of Five Legislative Proposals*, by (name redacted). September 15, 2008.

production. H.R. 6899 also would enact a renewable portfolio standard, a requirement that power companies generate 15% of their energy from renewable sources by 2020.

Energy Tax Provisions in H.R. 6899

The energy tax provisions in H.R. 6899 (Title XIII, the Energy Tax Incentives Act of 2008) are largely the same as those in H.R. 5351, an approximately $18 billion energy tax package that was approved by the House on February 27, 2008. They also include some of the measures in H.R. 6049, another energy tax bill that was also approved by the House.[5] H.R. 5351 is, in turn, a smaller version of the energy tax title that was dropped from H.R. 3221 in December 2007, but larger than the $16 billion bill approved by the Ways and Means Committee in 2007 (H.R. 2776). However, because H.R. 6899 incorporates some of the incentives of H.R. 6049, its total cost is higher than the cost of H.R. 5351: about $19 billion over 10 years, instead of $18 billion.

H.R. 6899 includes several tax incentives for renewable energy that would reduce revenue by an estimated $19 billion over 10 years.[6] At a cost of $6.9 billion over 10 years, it extends a renewable energy production tax credit, covering wind facilities for one additional year, through 2009, and certain other renewable energy production for three years, through 2011, while capping credits for facilities that come into service after 2009. The bill extends for eight years, through 2016, a credit for investing in solar energy and fuel cells, at a cost of $1.8 billion. It also extends the energy-efficient commercial building deduction for five years, the credit for efficiency improvements to existing homes for one year, and a credit for energy-efficient appliances for three years.

The measure provides for the allocation of $2.625 billion in energy conservation bonds, $1.75 billion in clean renewable energy bonds, and $1.75 billion in energy security bonds to finance the installation of natural gas pumps at gas stations; all would be tax-credit bonds, which provide a tax credit in lieu of interest, and projects financed through the bonds would have to comply with Davis-Bacon requirements. It also creates a new tax credit for plug-in electric vehicles, an accelerated recovery period for smart electric meters and grid systems, and provides $1.1 billion in tax credits for carbon capture and sequestration projects. The tax title also includes one non-energy tax subsidy: a $1.1 billion provision to restructure the New York Liberty Zone tax incentives to allow for new transportation projects.

H.R. 6899 is fully offset, raising $19 billion in taxes, including many of the same energy tax increases on oil companies also previously approved by the House. The energy tax provisions in H.R. 6899 are entirely offset, mainly by denying the IRC §199 manufacturing deduction to certain major integrated oil companies (including oil companies controlled by foreign governments—including CITGO) and freezing the deduction for all other oil and gas producers at the current rate of 6%.[7] Earlier §199 repeal proposals had been criticized for seeking to end the

[5] As noted, the House has approved several energy tax bills over the last two years, only to have them stall in the Senate. H.R. 6049, for instance, was approved by the House on May 21, 2008 only to fail several cloture votes in the Senate (see footnote 3).

[6] U.S. Congress. Joint Committee on Taxation. *Estimated Revenue Effects of Title VIII of H.R. 6899, The "Energy Tax Incentives Act of 2008," as Passed by the House of Representatives on September 16, 2008*. JCX-68-08. September 17, 2008.

[7] First enacted in 2004, this provision 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 (continued...)

deduction only for U.S.-based major companies, while exempting Venezuelan-controlled CITGO because, not being a crude oil producer, it does not meet the definition of a "major integrated oil and gas producer." The entire provision would raise $13.9 billion over 10 years. Additional revenue—about $4.0 billion over 10 years—would come from a provision to streamline the tax treatment of foreign oil-related income so it is treated the same as foreign oil and gas extraction income.

In addition to the H.R. 6899, the Republican leadership in the House has introduced its own energy tax bill, H.R. 6566, which also extends and expands some of the energy tax incentives and contains no tax increases (offsets). The energy tax provisions in this bill are, however, smaller and somewhat narrower than those in H.R. 6899.

S. 3478

In the Senate, legislative efforts on energy tax incentives and energy tax extenders center around S. 3478, the Energy Independence and Investment Act of 2008, a $40 billion energy tax bill offered by Finance Committee Chairman Max Baucus and ranking Republican Charles Grassley. Senate Majority Leader Harry Reid said on September 12 that S. 3478 is "must-pass" legislation. Reid told reporters the energy tax package, which includes extensions of tax incentives for renewable energy, should be prioritized even ahead of the broader energy policy bills being considered, and the rest of the non-energy tax extenders package. Reid said he hopes to bring the bill to the floor during the week of September 15, but noted that the schedule depends on whether Senate Republicans will agree to move to the legislation.[8]

While most of the tax incentives in the bill are extensions of existing policy and are not controversial, the legislation would need to be paid for through new sources of revenue. One proposed offset—which has been previously blocked by Republicans—would repeal the IRC §199 manufacturing deduction for the five major oil and gas producers, raising $13.9 billion over 10 years. The bill also would be paid for through a new 13% excise tax on oil and natural gas pumped from the Outer Continental Shelf, a proposal to eliminate the distinction between foreign oil and gas extraction income and foreign oil-related income, and an extension and increase in the oil spill tax through the end of 2017. In total, tax increases on the oil and gas industry would account for $31 billion of the $40 billion total cost of the legislation. The final major offset would come from a requirement on securities brokers to report on the cost basis for transactions they handle to the Internal Revenue Service, a provision expected to raise about $8 billion in new revenues over 10 years.

The tax offsets, or tax increases in S. 3478 are not without controversy, however, particularly the repeal of the IRC §199 manufacturing deduction for the five major oil and gas producers, as

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(...continued)

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 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).

[8] Bureau of National Affairs. *Daily Tax Report*. "Reid Says 'Must Pass' Energy Legislation Should be Handled Before Tax Extenders." September 15, 2008. P. G-5.

discussed previously. Several times the House has approved energy tax legislation, and several times in the Senate such legislation failed a cloture vote and thus could not be brought to the floor for debate.

As noted above, Republicans have in the past objected to the idea of raising taxes to offset extension of expiring energy tax provisions, which they consider to be an extension of current tax policy rather than new tax policy. In addition, some Senate Republicans have objected to raising taxes on the oil and gas industry, particularly by repealing the IRC §199 deduction. The Bush Administration threatened to also veto any energy tax bill that would increase taxes on the oil and gas industry. At this writing, it appears that inclusion of the §199 deduction repeal as an offset might preclude the energy tax bill from coming to the Senate floor—some believe that it would fail another cloture vote—so this provision might not survive the process.[9]

Finally, the debate in the Senate over energy tax incentives and energy tax extenders is seen as potentially involving three other separate proposals: (1) The Gang of 20 proposal or "New Energy Reform Act of 2008"(this has not yet been introduced); (2) A Bingaman/Baucus bill (also not formally introduced); and (3) the Republican "Gas Price Reduction Act" (introduced by Senator McConnell as Senate Amendment 5108).

A side-by-side comparison of H.R. 6899 and S. 3478 is in **Table 1**.[10] Revenue estimates were generated by the Joint Committee on Taxation.

[9] Bureau of National Affairs. *Daily Tax Report*. "Plan to Bring Tax Extenders to Floor Scraps Section 199 Deduction Repeal for Oil Firms." September 17, 2008. P. G-13.

[10] A side-by-side comparison of H.R. 6049 and S. 3478 is in CRS Report RL34669, by (name redacted), September 16, 2008.

Table 1. Side-by-Side Comparison of S. 3478 and the Energy Tax Provisions of H.R. 6899

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
		Fossil Fuels Supply		
Percentage Depletion for Marginal Oil and Gas Wells	Independent producers can claim a higher depletion rate(up to 25%, rather than the normal 15%) for up to 15 barrels per day of oil (or the equivalent amount of gas) from marginal wells ("stripper" oil/gas and heavy oil). The percentage depletion allowance is limited to 100% of taxable income from *each property*, but this limitation is suspended through December 31, 2007 for marginal oil and gas. The percentage depletion allowance is also limited to 65% of taxable income from *all properties* [IRC§613A(c)(6); [IRC§613A(c)(6)(H); [IRC§ 613A(d)].	*Sec. 213*. The proposal extends for three years (through December 31, 2010) the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well. The estimated cost of this proposal is $364 million over 10 years.	No provision.	
Petroleum Refineries	Assets used in petroleum refining are generally depreciated over 10 years. But, a temporary provision allows the expensing of refinery property which either increases total capacity by 5% or which processes nonconventional feedstocks at a rate equal or greater to 25% of the total throughput of the refinery [IRC§168(e)(3)].	*Sec. 212*. This bill extends the refinery expensing contract requirement and the placed-in-service requirement for two years. The proposal also qualifies refineries directly processing shale or tar sands. The estimated cost of this proposal is $894 million over 10 years.	No provision.	This is one of the several tax incentives for the oil industry created by The Energy Policy Act of 2005(EPACT05, P.L. 109-58).
		Carbon Mitigation and Coal		
Credit for Investment in Clean Coal Facilities	A 15% investment credit is provided for advanced coal projects and a 20% credit is provided for qualified coal gasification projects, respectively. The credit is for coal gasification projects which must use an integrated gasification combined cycle (IGCC) technology. The total credits available for qualifying advanced coal projects is	*Sec. 111 & 112.* The bill provides $2.5 billion in new total tax credits for the creation of advanced coal electricity projects and certain coal gasification projects that demonstrate the greatest potential for carbon capture and sequestration (CCS) technology. Of these $2.5 billion of total	*Sec. 811 & 812.* Similar to S. 3478, except that the total credits are only $1.1 billion: $950 million for advanced coal projects, and $150 million for coal gasification projects. This proposal is estimated to cost $1.044 billion over 10 years.	This tax credit was also one of the several energy tax incentives created by EPACT05.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	limited to $1.3 billion, with $800 million allocated to IGCC projects and the remaining $500 million to projects using other advanced coal-based generation technologies [IRC §48A and IRC §48B].	incentives, $2 billion would be earmarked for advanced coal electricity projects and $500 million for coal gasification projects. These tax credits will be awarded by Treasury through an application process, with applicants that demonstrate the greatest CO2 sequestration percentage receiving the highest priority. Projects must capture and sequester at least 65% of the facility's CO2 emissions or their coal gasification project must capture and sequester at least 75% of the facility's CO2 emissions. The estimated cost of this proposal is $2.373 billion over 10 years.		
CO2 Capture Tax Credit	No provision.	*Sec. 115*. The proposal provides a $10 credit per ton for the first 75 million metric tons of CO2 captured and transported from an industrial source for use in enhanced oil recovery and $20 credit per ton for CO2 captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO2 per year. The credit applies to CO2 stored or used in the United States. The estimated cost of this proposal is $1.119 billion over 10 years.	No provision.	
Carbon Audit of Tax Code	No provision.	*Sec. 116*. The bill directs the Secretary of the Treasury to request that the National Academy of Sciences undertake a comprehensive review of the tax code to identify the types of	*Sec. 815*. Identical to S. 3478.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
		specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects. Authorizes $1.5 million for the study. This proposal has no revenue effect.		
		Other Coal Tax Provisions		
Black-Lung Excise Tax	An excise tax is imposed on coal mined domestically and sold by the producer, at the rate of $1.10 per ton for coal from underground mines and $0.55 per ton for coal from surface mines (the aggregate tax per ton is capped at 4.4% of the amount sold by the producer). Reduced tax rates apply after the earlier of December 31, 2013 or the date on which the Black Lung Disability Trust Fund has repaid, with interest, all amounts borrowed from the general fund of the Treasury. Tax receipts are deposited in the Black Lung Disability Trust Fund, and used to pay compensation, medical and survivor benefits to eligible miners and their survivors and to cover costs of program administration. The Trust Fund is permitted to borrow from the General Fund any amounts necessary to make authorized expenditures if excise tax receipts do not provide sufficient funding [IRC§4121].	*Sec. 113*. The bill would enact the President's FY2009 proposal to bring the Black Lung Disability Trust Fund out of debt. The President's Budget proposes that the current excise tax rate should continue to apply beyond 2013 until all amounts borrowed from the general fund of the Treasury have been repaid with interest. After repayment, the reduced excise tax rates of $0.50 per ton for coal from underground mines and $0.25 per ton for coal from surface mines would apply (aggregate tax per ton capped at 2% of the amount sold by the producer). Rates are extended through 2018. The proposal is estimated to raise $1.287 billion over 10 years.	*Sec. 813.* The House bill in identical to the Senate bill. The proposal is estimated to raise $1.287 billion over 10 years.	See CRS Report RS21935, *The Black Lung Excise Tax on Coal*.
Black-Lung Excise Tax on Exported Coal	Since 2000 (which is when the IRS issued Notice 2000-28), the black lung excise tax has not been imposed on exported coal (i.e., domestically produced coal sold and destined for export). The courts have determined that the Export Clause of the U.S.	*Sec. 114*. The bill creates a new procedure under which certain coal producers and exporters may claim a refund of these excise taxes that were imposed on coal exported from the United States. Under this procedure, coal	*Sec. 814*. This provision is identical to that in the Senate bill. The estimated cost of this proposal is $199 million over 10 years.	See CRS Report RS22881, *Coal Excise Tax Refunds: United States v. Clintwood Elkhorn Mining Co.*

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	Constitution prevents the imposition of the coal excise tax on exported coal and, therefore, any taxes collected on such exported coal in the past are subject to a claim for refund. [IRC§4121.	producers or exporters that exported coal during the period beginning on or after October 1, 1990 and ending on or before the date of enactment of the bill, may obtain a refund from the Treasury of excise taxes paid on such exported coal and any interest accrued from the date of overpayment. The estimated cost of this proposal is $199 million over 10 years.		
		Electricity Restructuring Provisions		
Sale or Disposition of Transmission Assets	Under present tax law, the sale of electricity transmission or distribution facilities is generally considered to be an involuntary conversion, and gain from the sale or disposition of such assets is recognized over eight years, rather than taxed all at once in the year of the sale [IRC §§451, 1033, 1245, 1250].	*Sec. 401*. The bill extends the present-law eight-year deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. The rule applies to sales before January 1, 2010. This proposal is revenue neutral over 10 years.	*Sec. 805*. Identical to the Senate bill. This proposal is revenue neutral over 10 years.	The eight-year recognition rule was introduced by EPACT05.
		Renewable and Alternative Fuels		
Electricity from Renewable Fuels	Electricity producers may claim a tax credit of 1.5¢/kWh (in 1992 dollars; generally 2.0¢ in current dollars) for electricity produced from wind energy, "closed-loop," and open-loop biomass, and other renewable resources as well as for refined coal. Placed-in-service date is December 31, 2008 [IRC§45].	*Sec. 101 &102*. The Senate bill extends the placed-in-service date by three years, through December 31, 2011. The bill expands the types of facilities qualifying for the credit to new biomass facilities and those that generate electricity from marine renewables (e.g., waves and tides). The bill updates the definition of an open-loop biomass facility, the definition of a trash combustion facility, and the definition of a non-hydroelectric dam. The bill also extends the refined coal credit, while removing	*Sec. 801 &802*. The House bill also has a three-year extension of the placed-in-service date through December 31, 2011, but for wind, the extension is for only one year through 12-31-2009. It also adds marine renewables (e.g., waves and tides) and hydrokinetic energy as a qualified resource. The bill would repeal the current phase-out mechanism, replacing it with a cap on the present value of the credits, which cannot exceed 35% of the facility's cost. The bill clarifies the availability of the production tax	Current tax credit is generally available for 10 years after placed-in-service, but new equipment has to be placed-in-service by 12-31-2008. So this tax credit would not be available on new investments after 12-31-2008, unless it is extended.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
		the market value test and increasing coal emissions standards. The estimated cost of this proposal is $15.414 billion over 10 years.	credit with respect to certain sales of electricity to regulated public utilities and updates the definition of an open-loop biomass facility, trash combustion facility, and nonhydroelectric dam. This proposal is estimated to cost $6.893 billion over 10 years.	
Business Solar, Geothermal, Fuels Cells, and Other Renewable Technologies	A permanent 10% tax credit is provided for investments in solar and geothermal equipment used to generate electricity (including photovoltaic systems), or solar equipment used to heat or cool a structure, and for process heat. The 30% credit for solar, fuel cells and the 10% credit for micro-turbines is available through 12-31-2009. Geothermal energy reservoirs also qualify for a 15% percentage depletion allowance. Depreciation recovery period for renewable technologies is five years. Fuel cells do not qualify for tax subsidies [IRC§45,46,48, 613(e)].	*Sec. 103 & 107*. S. 3478 extends the 30% investment tax credit for solar energy property and qualified fuel cell property, as well as the 10% investment tax credit for micro turbines, for eight years (through 12-31-2016). The bill adds small commercial wind, geothermal heat pumps, and combined heat and power systems (at a 10% credit rate) as a category of qualified investment. The bill also increases the $500 per half kilowatt of capacity cap for qualified fuel cells to $1,500 per half kilowatt and allows these credits to be used to offset the alternative minimum tax (AMT). The estimated cost of this proposal is $1.919 billion over 10 years.	*Sec.803*. This provision is similar to the Senate's. This proposal is estimated to cost $1.765 billion over 10 years.	Under current law, energy-related income tax credits, and many of the non-energy tax credits, are aggregated and claimed as one general business credit, which is also subject to several limitations, including the alternative minimum tax limitation. [IRC§38]
Residential Solar and Other Renewables Used in Residences	A 30% tax credit is provided for residential applications of solar generated electricity (photovoltaics) as well for solar water heating. This credit is available through 12-31-2008 (IRC§25D).	*Sec. 104*. The bill extends the credit for residential solar property for eight years (through 2016), and doubles it from $2,000 to $4,000. The bill adds residential small wind investment, capped at $4,000, and geothermal heat pumps, capped at $2,000, as qualifying property. The bill also allows the credit to be used to offset the AMT. The estimated cost of this proposal is $907 million over 10 years.	*Sec.804*. This provision is the same as in the Senate bill. This proposal is estimated to cost approximately $907 million over 10 years.	The payment of the AMT may substantially reduce, or even eliminate, this (as well as other) energy tax credits.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
Clean Renewable Energy Bonds	State and local governments may issue clean renewable energy bonds ("CREBS") in order to finance renewable projects (wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydro-power, landfill gas, marine renewable and trash combustion facilities). Unlike other state and local bonds, which are exempt from federal taxation, these bonds provide a tax credit to the holding taxpayer. Only $1.2 billion of such bonds may be issued nationally; $0.75 billion by governmental bodies. CREBS must be issued before 12-31-2008 [IRC §54].	*Sec. 105*. The Senate bill increases the maximum authorized amount of CREBS issues to $2 billion to finance facilities that generate electricity from renewables. This $2 billion authorization is subdivided into thirds: 1/3 for qualifying projects of state/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. The bill also provides an additional year for current allocations to issue bonds. The estimated cost of this proposal is $551 million over 10 years.	*Sec. 806*. The House bill is similar to the Senate bill, but the national limitation is $1.75 billion instead of $2.0 billion. This proposal is estimated to cost $497 million over 10 years.	
Nuclear Electricity Production Tax Credit	A taxpayer producing electricity at a qualifying advanced nuclear power facility can claim a credit equal to 1.8¢/kilowatt hour of electricity produced for the eight-year period starting when the facility is placed in service. The aggregate amount of credit that a taxpayer may claim in any year during the eight-year period is subject to limitation based on allocated capacity and an annual limitation. A qualifying advanced nuclear facility is one that is placed in service before January 1, 2021. The Secretary of Treasury may allocate up to 6,000 megawatts of capacity [IRC§45I].	*Sec. 402*. This proposal increases the maximum allocation amount to 8,000 megawatts. Public-private partnerships will also be allowed to utilize the credit. This proposal has no revenue effect.	No provision.	A qualifying advanced nuclear facility is one for which the taxpayer has received an allocation of megawatt capacity from the Secretary of the Treasury, in consultation with the Secretary of Energy. See CRS Report RL33558, *Nuclear Energy Policy*.
		Energy Conservation and Energy Efficiency		
<u>Business Sector</u>				
Energy Efficiency in Commercial Buildings	The tax code provides a formula-based tax deduction, subject to a limit equal to $1.80 per sq.ft. of the	*Sec. 303*. The bill extends the energy-efficient commercial buildings deduction for five years,	*Sec. 843*. Same as the Senate bill. The estimated cost of this proposal is $891 million over 10 years.	Qualifying property must be installed as part of: (1) the interior lighting system, (2) the

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	building, for all or part of the cost of energy efficient commercial building property (i.e., certain major energy-savings improvements made to domestic commercial buildings) placed in service after December 31, 2005 and before January 1, 2009 [IRC §179D].	through December 31, 2013. The estimated cost of this proposal is $891 million over 10 years.		heating, cooling, ventilation and hot water systems, or (3) the building envelope, and it must reduce total annual energy and power costs of the building by 50% or more in comparison to a reference building that meets the minimum requirements of building standards by the society of engineers.
Bonds for Green Buildings and Sustainable Design Projects	State and local governments have the authority to issue tax-exempt bonds for green buildings and sustainable design projects [IRC§142].	*Sec. 307.* The bill extends the authority to issue qualified green building and sustainable design project bonds through the end of 2012. The bill also clarifies the application of the reserve account rules to multiple bond issuances. The estimated cost of this proposal is $45 million over 10 years.	*Sec. 846.* Identical to the Senate provision. The estimated cost of this proposal is $45 million over 10 years.	
Energy Management Devices	Current law provides no special tax incentives for meters, thermostats, and other energy management devices that allow utilities or consumers to monitor, control energy use; such property is depreciable over 20 years if used in a business [IRC §168].	*Sec. 306.* The bill provides accelerated depreciation for smart electric meters and smart electric grid systems, allowing taxpayers to recover the cost of this property over seven years. The estimated cost of this proposal is $1.716 billion over 10 years.	*Sec. 845.* Similar to the Senate bill except that the recovery period would 10 years instead of seven years. The estimated cost of this proposal is $921 million over 10 years.	
<u>Residential Sector</u>				
Energy-Efficiency Retrofits to Existing Homes	There is a 10% credit, up to a $500 maximum lifetime credit,- for energy efficiency improvements in the building envelope of existing homes and for the purchase of high-efficiency heating, cooling, and water heating equipment. Efficiency improvements and/or equipment must be placed in service before December 31, 2007. Selected energy efficiency equipment and items qualify for specific tax credits ranging from $50-$300 [IRC	*Sec. 302.* The bill retroactively extends the tax credits for energy-efficient retrofits to existing homes for 2009, 2010 and 2011, and includes energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for a consumer tax credit of $300. The proposal also clarifies the efficiency standard for water heaters. The estimated cost of this proposal is $2.509 billion over 10	*Sec. 842.* The bill retroactively extends the tax credits for energy-efficient existing homes for two years (through December 31, 2009) and includes energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for a consumer tax credit of $300. This proposal is estimated to cost $1.067 billion over 10 years.	This credit was enacted as part of EPACT05, but it expired at the end of 2007.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	§25C].	years.		
Construction of Energy-Efficient New Homes	A tax credit as high as $2,000 is available to eligible contractors for the construction of qualified new energy-efficient homes if the homes achieve an energy savings of 50% over the 2003 International Energy Conservation Code (IECC). The amount of the new energy-efficient home credit depends on the energy savings achieved by the home relative to that of a 2003 IECC compliant comparable dwelling unit. The credit expires at the end of 2008. [IRC §45L]	*Sec. 304*. The bill extends the new energy efficient home tax credit for three years, through December 31, 2011. The estimated cost of the proposal is $143 million over 10 years.	No provision.	
Manufacture of Energy-Efficient Home Appliances	A credit is available for the eligible production (manufacture) of certain energy-efficient dishwashers, clothes washers, and refrigerators. The total credit amount is equal to the sum of the credit amount separately calculated for each of the three types of qualified energy-efficient appliance. The credit for dishwasher is $3 multiplied by the percentage by which the efficiency of the 2007 standards (not yet known) exceeds that of the 2005 standards (the credit may not exceed $100 per dishwasher). The credit for clothes washers is $100 for clothes washers that meet the requirements of the Energy Star program in effect for clothes washers in 2007. The credit for refrigerators ranges from $75-$175 each [IRC §45M].	*Sec. 305*. The bill modifies the existing energy-efficient appliance credit and extend this credit for three years, through the end of 2010. The estimated cost of this proposal is $322 million over 10 years.	*Sec. 844*. This provision is identical to that in S. 3478. The estimated cost of this proposal is $322 million over 10 years.	The maximum amount of the new credit allowable to a taxpayer is capped at $75 million per tax year for all qualifying appliances manufactured during that year. In each subsequent year the cap is reduced by the amount (if any) of the credit used in any prior tax year. Of that $75 million (or reduced) cap, no more than $20 million of credit amount in a single tax year may result from the manufacture of refrigerators to which the $75 applicable amount applies (i.e., refrigerators which are at least 15 percent but no more than 20 percent below 2001 energy conservation standards). In addition to the $75 million cap on the credit allowed, the overall credit amount claimed for a particular tax year may not exceed 2% of the taxpayer's average annual gross receipts for the preceding three tax years.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
Qualified Energy Conservation Bonds	No provision.	*Sec. 301*. The bill creates a new category of tax credit bonds to finance state and local government initiatives designed to reduce greenhouse emissions. There is a national limitation of $3 billion, allocated to states, municipalities and tribal governments. The estimated cost of this proposal is $1.025 billion over 10 years.	*Sec. 841*. The provision is similar to that in S. 3478, except that the national limitation is $2.625 billion. This proposal is estimated to cost $895 billion over 10 years.	
		Transportation Sector		
<u>Advanced Technology Vehicles</u>				
New Plug-In Hybrid Vehicles	The Energy Policy Act of 2005 (P.L. 109-58) created a new system of tax credits for four types of advanced-technology vehicles (ATVs): hybrid vehicles, fuel cell vehicles, advanced lean-burn vehicles, and other alternative fuel vehicles. The credit for hybrids range from $250 to $3,400 per vehicle and are available through December 31, 2009, but each manufacturer has a 60,000 lifetime vehicle limit. [IRC §30B].	*Sec. 204 & 205*. The Senate bill establishes a new credit for qualified plug-in electric drive vehicles. The base amount of the credit is $2,500. If the qualified vehicle draws propulsion from a battery with at least 6 kW hours of capacity, the credit amount is increased by $400, plus another $400 for each kW hour of battery capacity in excess of 6 kWhours. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the total number of qualified plug-in electric drive vehicles sold in the U.S. is at least 250,000. The credit is available against the alternative minimum tax (AMT). The estimated cost of this proposal is $755 million over 10 years.	*Sec. 824*. The bill establishes a new credit for each qualified plug-in electric drive vehicle placed in service during each taxable year by a taxpayer. The base amount of the credit is $3,000. If the qualified vehicle draws propulsion from a battery with at least 5 kilowatt hours of capacity, the credit amount is increased by $200, plus another $200 for each kilowatt hour of batter/capacity in excess of 5 kilowatt hours up to 15 kilowatt hours. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records 60,000 sales. The credit is reduced in following calendar quarters. The credit is available against the alternative minimum tax (AMT). This proposal is estimated to cost $1.056 billion over 10 years.	Toyota reached its limit in 2006; Honda in 2007. Thus, purchasers of hybrid vehicles from these manufacturers no longer qualify for the tax credits. The two bills essentially add plug-in hybrid vehicles as a new technology to the existing system of tax credits, but with their own separate tax credit structure.
Other Alternative Technology Vehicles	The tax credits for advanced lean-burn vehicles is the same as for hybrids; the credit for fuel cell vehicles may be as high as $4,000 for	*Sec. 205*. The bill extends the lean burn, heavy hybrid, and alternative fuel vehicle tax credit through 2011,and reduces the fuel cell	No provision.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	cars, and $40,000 for heavy-duty trucks; the credit for advanced alternative fuel vehicles is up to 80% of marginal costs, limited to $32,000. [IRC §30B]	credit to $7,500 at the end of 2009. The credit is available against the alternative minimum tax (AMT). The estimated cost of this proposal is $527 million over 10 years.		
Alternative-Fuel Refueling Stations	A tax credit is provided equal to 30% of the cost of any qualified alternative fuel vehicle refueling property installed to be used in a trade or business or at the taxpayer's principal residence. The credit would be limited to $30,000 for retail clean-fuel vehicle refueling property, and $1,000 for residential clean-fuel vehicle refueling property. The property must be placed in service before1-1-2010 (1-1-2015 for hydrogen property) [IRC§30C.]	*Sec. 208.* The bill extends the 30% alternative refueling property credit (capped at $30,000) for three years, through 2012. The provision provides a tax credit to businesses (e.g., gas stations) that install alternative fuel pumps, such as fuel pumps that dispense fuels such as E85, compressed natural gas and hydrogen. The bill also adds electric vehicle recharging property to the definition of alternative refueling property. The estimated cost of this proposal is $256 million over 10 years.	*Sec. 828.* The provision in H.R. 6899 is similar to the provision in S. 3478. The bill increases the 30% alternative refueling property credit (capped at $30,000) to 50% (capped at $50,000). The bill also extends this credit through the end of 2010, 2017 for certain natural gas type fuels. The estimated cost of this proposal is $226 million over 10 years.	The credit provides a tax credit to businesses (e.g., gas stations) that install alternative fuel pumps, such as fuel pumps that dispense E85 fuel.
Energy Security Bonds	No provision	No provision.	*Sec. 828.* The bill creates a new type of tax-credit bond known as "energy security" bonds and provides for the allocation of $1.75 billion in bonding authority. The bill requires 100% of the available project proceeds to be used for "qualfied purposes," which would include the making of grants and low-interest loans for natural gas refueling properties at retail gas stations. The bill stipulates that a loan could be no more than $200,000 for a property located at any one retail gas station and stipulates that loans could not cover more than 50% of the cost of the property and its installation. Allocations would be made by the Treasury Department among	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
			qualified issuers, including states and political subdivisions or instrumentalities thereof. The bill requires that 50% of the limitation be allocated only for loans for natural gas refueling property in metropolitan statistical areas. The measure also directs the department to attempt to ensure that at least 10% of the motor fuel stations receive loans from the proceeds of the bonds. The measure's provisions would apply to bonds issued by Dec. 31, 2017. It also coordinates the energy security tax-credit bonds with the refueling credit. This proposal is estimated to cost $76 million over ten years.	
<u>**Biofuels**</u>				
Cellulosic Fuel Alcohol Production	Alcohol fuels qualify for production and blending tax credits (either income or excise tax credits) and refunds. The credit for ethanol is $0.51per gallon. In addition, there is an ethanol small producer credit of $0.10 per gallon, up to 15 million gallons annually. Facilities that produce cellulosic ethanol are also allowed the 50% bonus depreciation if such facilities are placed in service before January 1, 2013. The farm bill (P.L. 110-246) also included a new, temporary cellulosic bio-fuels production tax credit for up to $1.01 per gallon, available through December 31, 2012 [IRC §168].	*Sec. 201*. The bill makes this benefit available for the production of other cellulosic biofuels in addition to cellulosic ethanol. This proposal is estimated to be revenue neutral over 10 years.	*Sec. 821*. The House bill provision is identical to that in the Senate bill.	
Alternative Fuels Excise Tax Credits	The tax code imposes excise taxes on motor fuels at varying rates, but also provides tax credits (at varying amounts) against these taxes for	*Sec. 207*. The bill extends the alternative fuel excise tax credit through December 31, 2011 for all fuels except for hydrogen (which	No provision.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	various types of alternative fuels; it also provides small producer tax credits for some of the fuels such as ethanol and bio-diesel. The credits generally expire at the end of 2008 [IRC §6426, §6427].	maintains its current-law expiration date of September 30, 2014). Upon date of enactment, for liquid fuel derived from coal through the Fischer-Tropsch process ("coal-to-liquids"), to qualify as an alterative fuel, the fuel must be produced at a facility that separates and sequesters at least 50% of its CO2 emissions. The sequestration requirement increases to 75% on December 31, 2011. This 75% standard may be implemented prior to December 31, 2011, subject to certification of feasibility. The proposal further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit. The proposal is estimated to cost $569 million over 10 years.		
Volumetric Excise Tax Credit (VEETC) for Fuel Ethanol	Fuel ethanol qualifies for excise tax credits (or refunds), at the rate of $0.51/gallon of ethanol; and a small producer tax credit of $0.10/gallon. The excise tax credit was established in the American Jobs Creation Act of 2004. Per the 2008 farm bill, starting the year after which 7.5 billion gallons of ethanol are produced and/or imported in the United States, the value of the credit is reduced to $0.45/gallon. The credit is currently authorized through December 31, 2010 [IRC§40, 6426, §6427]].	*Sec. 210.* This bill extends VEETC, including the 10¢/gallon small producer credit, through 12/31/2011. The estimated cost of this proposal is $4.978 billion over 10 years.	No provision.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
Small Producer Tax Credit for Fuel Ethanol	As noted above, in the case of ethanol, the tax code also provides a small producer tax credit of $0.10/gallon, up to 15 million gallons [IRC §40A].	*Sec. 211*. S. 3478 creates a new small producer alcohol credit of 10 cents per gallon for facilities that produce ethanol through a process that does not use a fossil-based resource. The credit is available through December 31, 2011. The estimated cost of this proposal is $210 million over 10 years.	No provision.	
Biodiesel Blender's Tax Credit and Small Biodiesel Producer Credit	Refundable income tax credits and excise tax credits are available for the blending and production of biodiesel. The basic credit is $0.50/gallon ($1.00/gallon for virgin or "agri" biodiesel) and is also provided on a volumetric basis. Production of biodiesel by a small producer qualifies for a $0.10/gallon credit up to 15 million gallons. These credits expire at the end of 2008 [IRC §40A, 6426, and 6427].	*Sec. 202 & 203.*The bill extends for three years (through December 31, 2011) the $1.00 per gallon production tax credits for biodiesel and the small biodiesel producer credit of 10¢ per gallon. The bill extends the $1.00 tax credit for virgin biodiesel to recycled biodiesel. Biodiesel that is imported and sold for export will not be eligible for the credit effective May 15, 2008. The combined cost of the biodiesel proposal and the renewable diesel provision (please see the next item) is $2.256 billion over 10 years.	*Sec. 822 & 823.* The bill extends for one year (through December 31, 2009) the $1.00/gallon production tax credits for biodiesel and the small biodiesel producer credit of 10 ¢/ gallon, but does not eliminate the current-law disparity in credit for biodiesel and agri-biodiesel. The bill also clarifies that certain fuel-related tax credits are designed to provide an incentive for U.S. production, which would apply to claims for credit or payment made after May 15. The combined cost of this proposal and the renewable diesel proposal (discussed in the next item below) is estimated be $401 million over 10 years.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
Renewable Diesel Production Tax Credit	Refundable income tax credits and excise tax credits are available for the blending and production of renewable biodiesel. The basic credit is $1.00/gallon. Renewable diesel is diesel fuel derived from biomass using a "thermal depolymerization process"(TDP). TDP is a new technology that uses heat and pressure to change the molecular structure of wastes, plastics, and food wastes such as poultry carcasses and offal, and turn it into a boiler fuel. In order to qualify for the $1.00/gallon tax credits, the fuel must meet EPA's requirements for fuels and fuels additives under §211 of the Clean Air Act, and the requirements of the ASTM D975 and D396. These credits expire at the end of 2008 [IRC §40A, 6426, and 6427].	*Sec. 202*. The Senate bill extends for three years (through December 31, 2011) the $1.00 per gallon production tax credit for diesel fuel created from biomass. It eliminates the requirement that renewable diesel fuel must be produced using a thermal depolymerization process. As a result, the credit will be available for any diesel fuel created from biomass without regard to the process used so long as the fuel is usable as home heating oil, as a fuel in vehicles, or as aviation jet fuel. The bill caps the $1 per gallon production credit for renewable diesel for facilities that co-process with petroleum to the first 60 million gallons per facility. The estimated cost of the combined biodiesel proposal (previous item) and this proposal is $2.256 billion over 10 years.	*Sec. 822*. The bill extends for one year (through December 31, 2009) the $1.00 per gallon production tax credit for diesel fuel created from biomass. It also eliminates the requirement that renewable diesel fuel must be produced using a thermal depolymerization process. As a result, the credit will be available for any diesel fuel created from biomass without regard to the process used so long as the fuel is usable as home heating oil, as a fuel in vehicles, or as aviation jet fuel. The bill also clarifies that the $1 per gallon production credit for renewable diesel is limited to diesel fuel that is produced solely from biomass. Diesel fuel that is created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50¢/gallon tax credit for alternative fuels. This provision is estimated to raise $77 million over 10 years.	Some oil companies are adding animal fat or vegetable (soybean) oil as feedstocks along with crude oil in a conventional refinery to produce such fuels. Unlike biodiesel which blends the soybean oil ester after the diesel is made, the oil is added before as a feedstock. The resulting "co-produced fuel" comes out of the refinery as part of the regular diesel fuel mix, distributed through pipelines (unlike biodiesel), and sold as regular diesel fuel.
Tax Shelters for Alternative Fuels	Under current tax law, publicly traded partnerships are treated as corporations for tax purposes, unless they have passive income (dividend, rents, etc.) and income from certain mineral exploration and production, timber, and other activities [IRC §7704].	*Sec. 209*. The bill allows publicly traded partnerships to treat income derived from the transportation and storage of certain alternative fuels as "qualifying income" for income tests used to determine whether an entity qualifies as a publicly traded partnership. Currently, 90% of the income of a publicly traded partnership must be qualifying income, or the entity is taxed as a corporation, to which higher rates apply. The bill covers fuels such as alcohol fuels and mixtures, biodiesel fuels and mixtures, and	*Sec. 830*. This provision appears to be the same as the Senate bill's provision. The estimated cost of this proposal is $76 million over 10 years.	The measure ensures that income derived from those fuels would receive treatment similar to income from oil and gas.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
		alternative fuels and mixtures. The bill applies to taxable years that begin after the measure is enacted. The estimated cost of this proposal is $78 million over 10 years.		
		Miscellaneous Transportation and Energy Provisions		
Truck Idling Units and Advanced Insulation	A 12% tax is imposed on the sale price of the first retail sale of (1) truck bodies and chassis suitable for use with a vehicle having a gross vehicle weight of over 33,000 pounds, (2) truck trailer and semitrailer bodies and chassis suitable for use with a vehicle having a gross vehicle weight over 26,000 pounds, and (3) tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. The retail tax also generally applies to the price and installation of parts or accessories sold on or in connection with, or with the sale of, a taxable vehicle [IRC §4051].	*Sec. 206*. The bill provides an exemption from the heavy vehicle excise tax for the cost of idling reduction units, such as auxiliary power units (APUs), which are designed to eliminate the need for truck engine idling (e.g., to provide heating, air conditioning, or electricity) at vehicle rest stops or other temporary parking locations. The bill also exempts the installation of advanced insulation, which can reduce the need for energy consumption by transportation vehicles carrying refrigerated cargo. Both of these exemptions are intended to reduce carbon emissions in the transportation sector. The estimated cost of this proposal is $95 million over 10 years.	*Sec. 825*. This provision is identical to that in S. 3478.	
Transportation Fringe Benefits	Gross income includes any income from whatever source, including income in kind, such as fringe benefits, unless specifically excluded. Certain employer-provided transportation fringe benefits are excluded up to certain amounts: up to $220/month for parking and van pool benefits, and up to $115/month of transit passes [IRC §132].	No provision.	*Sec. 827*. The bill allows employers to provide employees that commute to work using a bicycle limited fringe benefits to offset the costs of such commuting (e.g., bicycle storage). This proposal is estimated to cost $10 million over 10 years.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
Recycling Property	Investments in recycling property receive no special tax incentives and are generally treated the same as other assets under the Modified Accelerated Depreciation System, which allows for shortened recovery periods, bonus depreciation, and expensing under certain conditions [IRC §168, 179].	*Sec. 308*. S. 3478 allows recycling property to qualify for the 50% special depreciation allowance, basically equivalent to expensing of 1/2 of the investment in such property. The estimated cost of this proposal is $162 million over 10 years.	No Provision.	Under the Crude Oil Windfall Profits Tax of 1980 (P.L. 96-223, recycling equipment qualified for a 10% investment tax credit, but these generally expired at the end of 1982.
		Tax Increases (Offsets) and Other Provisions		
Domestic Activities Manufacturing Deduction under the Corporate Income Tax	Beginning on 1-1-2005, qualified "manufacturing" businesses in the United States can claim a deduction for a certain percentage of their taxable incomes, subject to certain limits. The deduction was initially 3%, is now 6%, and is scheduled to increase to 9% in 2010. The definition of a domestic manufacturing activity is very broad and generally includes all energy market activities except for the transmission and distribution of electricity and natural gas. In particular, it includes oil and gas extraction and production [IRC §199].	*Sec. 501*. The bill repeals the IRC §199 manufacturing deduction for major integrated and state-owned oil and gas companies, beginning on 1-1-2009. It maintains the 6% deduction rate for other oil and gas companies. The proposal is estimated to raise $13.904 billion over 10 years.	*Sec. 851*. The provision in H.R. 5351 is identical to that in S. 3478. The proposal is estimated to raise $13.904 billion over 10 years.	The inclusion of state-owned companies is intended to extend the denial of the §199 deduction to foreign owned oil companies (such as CITGO, which is owned by the government of Venezuela). Such companies are large but are not "integrated" oil companies—they do not produce sufficient amounts of crude oil—and thus would otherwise continue to receive the deduction.
Excise Taxes on Oil and Natural Gas	At the federal level there is no excise tax on domestic (or imported) oil and natural gas, including oil and gas produced from the Outer Continental Shelf. Oil and gas companies are assessed excise taxes on oil purchased for refining (a 5¢/barrel tax that funds the Oil Spill Liability Trust Fund), and motor fuels excise taxes on refined petroleum products that fund various transportation and environmental trust funds. In addition, oil companies pay severance taxes to some states where they extract minerals, and pay royalties (which are factor payments,	*Sec. 502*. The proposal establishes a 13% excise tax on the removal price of any taxable crude oil or natural gas produced from federal submerged lands on the OCS in the Gulf of Mexico pursuant to a federal OCS lease. The removal price is defined as the amount for which the barrel of taxable crude oil or barrel-of-oil equivalent of natural gas is sold by the taxpayer. In the case of sales between related parties, the removal price is the constructive sales price of the oil or natural gas. The proposal	No provision.	A type of windfall profit tax on domestic crude oil production was in effect from April 1980 to August 1988. This tax, which was actually an excise tax, not a profits or income tax, was part of a compromise between the Carter Administration and the Congress over the decontrol of crude oil prices. It is discussed and analyzed in detail in CRS Report RL33305, *The Crude Oil Windfall Profit Tax of the 1980s: Implications for Current Energy Policy*.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
	not taxes) to landowners including the federal government [IRC §4041, §4081, §4611].	allows as a credit against the excise tax an amount equal to royalties paid under federal law with respect to taxable crude oil or natural gas, with the credit not to exceed the tax paid. The excise tax would apply to crude oil or natural gas removed after the date of enactment. The proposal is estimated to raise $11.663 billion over 10 years.		
Foreign Tax Credits on Oil Companies	United States businesses operating abroad generally pay taxes to foreign governments as well as United States taxes, which are generally assessed on worldwide income. A tax credit is allowed, subject to various limitations, against U.S. taxes for the amounts of these foreign taxes. Domestic oil companies operating abroad are also subject to additional limitation on their foreign oil and gas extraction income ("FOGEI") and foreign oil related income ("FORI") [IRC §§901-907].	*Sec. 503.* The proposal eliminates the distinction between FOGEI and FORI. FOGEI relates to upstream production to the point the oil leaves the wellhead. FORI is defined as all downstream processes once the oil leaves the wellhead (i.e., transportation, refining). Currently, FOGEI and FORI have separate foreign tax credit limitations. This proposal combines FOGEI and FORI into one foreign oil basket and applies the existing FOGEI limitation. The proposal is estimated to raise $2.23 billion over 10 years.	*Sec. 852.* The House bill, which is broader than the Senate bill) makes two specific changes to the calculation of such income. It bars the use of two methodologies established under a 2004 IRS field directive for calculating FOGEI and FORI, and would instead require companies to use an "arm's length" price by using the independent market value at the point nearest to the well at which an independent market exists when calculating such income. The bill also requires companies, when they pay foreign taxes that are limited to oil and gas companies, to treat the entire amount of their taxes on oil and gas extraction as applying to their FOGEI, rather than dividing the taxes between their FOGEI and their FORI. Because this provision would subject such income to the FOGEI limitation for foreign-tax credits, it would limit the credits claimed, and thus increase the revenue raised. This provision is effective for tax years that begin after the measure's enactment	Multinational oil companies currently allocate their income between FOGEI and FORI, which are subject to different taxation rules.

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
			date. These changes would raise an estimated $3.84 billion over 10 years.	
Oil Spill Liability Trust Fund Excise Tax	A 5¢-per-barrel excise tax is imposed on domestic and imported crude oil and petroleum products. The revenues from this tax go into the Oil Spill Liability Trust Fund and are used to clean up offshore oil spills [IRC §4611].	*Sec. 505.* The proposal extends the oil spill tax through December 31, 2017, increases the per barrel tax from 5 cents to 12 cents, and repeals the requirement that the tax be suspended when the unobligated balance exceeds $2.7 billion. The proposal is estimated to raise $3.4 billion over 10 years.	No provision.	Although the tax had expired at the end of 1994, Congress reinstated the 5¢ per barrel tax effective on April 1, 2006 (EPACT05, P.L. 109-58). The tax will remain in effect from this date until the Oil Spill Liability Trust Fund reaches an unobligated balance of $2.7 billion. Thereafter, the oil spill tax will be reinstated 30 days after the last day of any calendar quarter for which the IRS estimates that, as of the close of that quarter, the unobligated balance of the Oil Spill Liability Trust Fund is less than $2 billion. The oil spill tax will cease to apply after December 31, 2014, regardless of the Oil Spill Trust Fund balance.
Estimated Corporate Tax Payments	Under current law, corporations with assets of at least $1 billion are required to adjust their quarterly estimated corporate tax payments for certain quarters, including for July, August, and September of 2013, which is the last quarter of FY2013. Affected firms reduce their payments in the following quarter by a corresponding amount.	No provision.	*Sec. 853.* The bill further increases the payments due in July, August, or September 2013 by an additional 40 percentage points, but only for companies that had any significant income for the preceding taxable year from the extraction, production, processing, refining, transportation, distribution, or retail sale of fuel or electricity.	These provisions are generally used to shift anticipated revenue from one quarter to another in order to make measures comply with the pay-as-you-go budget rule.
Income Received as Damages from the Exxon-Valdez Litigation		*Sec. 403.* The bill would allow commercial fishermen and other individuals whose livelihoods were negatively impacted by the 1989 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in	No provision.	

Provision	Current Law	Senate Bill S. 3478	House Bill H.R. 6899	Comments
		connection with pending litigation in the federal courts over three years for federal tax purposes. The bill would also allow these individuals to use these funds to make contributions to retirement accounts. The estimated cost of this proposal is $49 million over 10 years.		

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