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S.2204 – Repeal Big Oil Tax Subsidies Act

On March 19, 2012, Senator Menendez introduced S. 2204, which was placed on the Senate Calendar via Rule 14 on March 20.

Noteworthy

- On Thursday, March 22, 2012, Senator Reid filed cloture on the motion to proceed to S. 2204, the Repeal Big Oil Tax Subsidies Act.
- S. 2204 essentially combines two pieces of legislation already defeated in the 112th Congress: Amendment #1812 to S. 1813, the Highway Bill, filed by Senator Stabenow, which was defeated by a vote of 49 to 49 on March 13, 2012; and S. 940, Close Big Oil Tax Loopholes Act, introduced by Senator Menendez, which was defeated by a vote of 52 to 48 on May 17, 2011.
- S. 2204 extends expired and expiring tax expenditures for renewable energy, alternative energy, energy efficiency, and mine safety training and equipment. The bill pays for these extensions by repealing certain oil and gas tax incentives.

Overview

S. 2204 incorporates an earlier legislative effort to extend expired and expiring tax expenditures for renewable energy, alternative energy, energy efficiency, and mine safety training equipment. The bill is paid for by repealing certain oil and gas tax incentives. The Act: (1) extends tax credits for: energy-efficient existing homes, certain plug-in electric vehicles, alternative fuel vehicle refueling property, cellulosic biofuel producers, biodiesel and renewable diesel, production credit for refined coal, Production Tax Credit, energy-efficient new homes, energy-efficient appliances, alternative fuels, and mine rescue team training; (2) extends: election of investment tax credit in lieu of production credit, special allowance for cellulosic biofuel plant property, suspension of limitation on percentage depletion for oil and gas from marginal wells,

1603 grants for specified energy property in lieu of tax credits, and election to expense mine safety equipment; (3) expands the cap on the amount of the advanced energy project credit; (4) treats algae as a qualified feedstock for purposes of the cellulosic biofuel producer credit and for purposes of bonus depreciation for biofuel plant property; and (5) repeals or modifies certain oil and gas tax incentives: dual capacity rule, Section 199 domestic manufacturing deduction, intangible drilling and development cost deduction, percentage depletion allowance for oil and gas wells, tertiary injectants deduction, Outer Continental Shelf deep water and deep gas royalty relief.

House Action

The House of Representatives has not taken any action in connection with S. 2204.

Bill Provisions

Section 1 – Short Title

Repeal Big Oil Tax Subsidies Act.

Title I – Tax Extensions Relating to Energy

Section 101 – Extension of Credit for Energy-Efficient Existing Homes

This section amends 26 U.S.C. § 25C(g) to extend to December 31, 2012, the tax credit available to individuals who make qualified energy efficiency improvements to their existing homes.

Section 102 – Extension of Credit for Certain Plug-In Electric Vehicles

This section amends 26 U.S.C. § 30(f) to extend to December 31, 2012, the tax credit available to a taxpayer who places into service a low-speed or a two- or three-wheeled plug-in electric vehicle.

Section 103 – Extension of Credit for Alternative Fuel Vehicle Refueling Property

This section amends 26 U.S.C. § 30C(g)(2) to extend to December 31, 2012, the tax credit available to a taxpayer who places into service a qualified alternative fuel vehicle refueling property.

Section 104 – Extension of Cellulosic Biofuel Producer Credit

This section amends 26 U.S.C. § 40(b)(6)(H) to extend to January 1, 2014, the tax credit available to a taxpayer who engages in qualified cellulosic biofuel production. It prohibits carry-over of tax credits to certain years after the expiration date.

Section 105 – Algae Treated as a Qualified Feedstock for Purposes of the Cellulosic Biofuel Producer Credit, Etc

This section amends 26 U.S.C. § 40(b)(6) to expand the definition of “cellulosic biofuel” to include algae, making the cellulosic biofuel producer tax credit available to taxpayers who produce fuel from algae.

This section amends 26 U.S.C. § 168(l) to treat algae as a qualified feedstock for purposes of bonus depreciation for biofuel plant property.

This section amends 26 U.S.C. § 40, as amended by this bill, and 26 U.S.C. § 168(l) to replace the term “cellulosic biofuel” with “second generation biofuel” for purposes of the cellulosic biofuel producer credit and bonus depreciation.

Section 106 – Extension of Incentives for Biodiesel and Renewable Diesel

This section amends 26 U.S.C. § 40A(g) to extend to December 31, 2012, the tax credit available to a taxpayer who sells or uses biodiesel or renewable diesel.

This section amends 26 U.S.C. § 6426(c) to extend to December 31, 2012, the excise tax credit available to a taxpayer who sells or uses biodiesel or renewable diesel.

Section 107 – Extension of Production Credit for Refined Coal

This section amends 26 U.S.C. § 45(d)(8) to extend to January 1, 2013, the tax credit available to a taxpayer who produces and sells electricity derived from refined coal at a qualified facility, excluding a facility producing steel industry fuel.

Section 108 – Extension of Production Tax Credit

This section amends 26 U.S.C. § 45(d) to extend to January 1, 2015, the tax credit available to a taxpayer who produces and sells electricity at a qualified closed-loop biomass, open-loop biomass, geothermal or solar energy, landfill gas, trash, hydropower, or marine and hydrokinetic renewable energy facility.

This section amends 26 U.S.C. § 45(d) to extend to January 1, 2014, the tax credit available to a taxpayer who produces and sells electricity at a qualified wind facility.

This section amends 26 U.S.C. § 45(e) to increase the amount of the tax credit available to a taxpayer who produces and sells electricity derived from Indian coal at a qualified facility.

Section 109 – Extension of Credit for Energy-Efficient New Homes

This section amends 26 U.S.C. § 45L(g) to extend to December 31, 2012, the tax credit available to an eligible contractor that constructs a qualified new energy-efficient home.

Section 110 – Extension of Credit for Energy-Efficient Appliances

This section amends 26 U.S.C. § 45M(b) to provide certain tax credits to producers of qualified energy efficient appliances manufactured in calendar year 2011 or 2012.

Section 111 – Extension of Election of Investment Tax Credit in Lieu of Production Credit

This section amends 26 U.S.C. § 48(a)(5)(C) to extend to 2014 a taxpayer's option to claim an investment tax credit in lieu of the production tax credit in connection with a qualified closed-loop biomass, open-loop biomass, geothermal or solar energy, landfill gas, trash, qualified hydropower, or marine and hydrokinetic renewable energy facility.

This section amends 26 U.S.C. § 48(a)(5)(C) to extend to 2013 a taxpayer's option to claim an investment tax credit in lieu of the production tax credit in connection with a qualified wind facility.

This section amends 26 U.S.C. § 48(a)(5) to extend to 2014 a taxpayer's option to claim an investment tax credit in lieu of the production tax credit in connection with a qualified offshore wind facility, which it defines as an offshore facility using wind to produce electricity located in the inland navigable waters or coastal waters of the United States.

Section 112 – Expansion of Qualifying Advanced Energy Project Credit

This section amends 26 U.S.C. § 48C(d)(1)(B) to increase the total amount of tax credits available for qualified advanced energy projects from \$2.3 billion to \$4.6 billion.

Section 113 – Extension of Special Allowance for Cellulosic Biofuel Plant Property

This section amends 26 U.S.C. § 168(l)(2)(D) to extend to January 1, 2014, a special depreciation deduction allowance in connection with qualified cellulosic biofuel plant property.

Section 114 – Extension of Suspension of Limitation on Percentage Depletion for Oil and Gas from Marginal Wells

This section amends 26 U.S.C. § 613A(c)(6)(H) to extend to January 1, 2013, the suspension of the taxable income limitation on the amount of the percentage depletion tax deduction that may be claimed in connection with oil and gas from marginal wells.

Section 115 – Extension of Alternative Fuels Excise Tax Credits

This section amends 26 U.S.C. §§ 6426(d)(5), 6426(e)(3), and 6427(e)(6)(C) to extend to December 31, 2012, the tax credits available to taxpayers who sell or use a qualified alternative fuel or alternative fuel mixture.

Section 116 – Extension of Grants for Specified Energy Property in Lieu of Tax Credits

This section amends § 1603(a) of the American Recovery and Reinvestment Act of 2009, as amended by § 707 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, to extend to 2012 a taxpayer's option to claim a grant in lieu of tax credits in connection with specified energy property.

Section 117 – Extension of Mine Rescue Team Training Credit

This section amends 26 U.S.C. § 45N(e) to extend to December 31, 2012, the tax credit available to eligible employers in connection with training program costs for qualified mine rescue team employees.

Section 118 – Extension of Election to Expense Mine Safety Equipment

This section amends 26 U.S.C. § 179E(g) to extend to December 31, 2012, a taxpayer's option to claim a deduction for part of the cost of qualified advanced mine safety equipment property.

Title II – Repeal of Oil and Gas Subsidies

Subtitle A – Close Big Oil Tax Loopholes

Section 201 – Modifications of Foreign Tax Credit Rules Applicable to Major Integrated Oil Companies Which Are Dual Capacity Taxpayers

This section amends 26 U.S.C. § 901 to narrowly target major integrated oil companies to pay taxes twice: once to the foreign government in which they operate, and again when they bring the foreign-earned income to the U.S. Section 201 does this by disallowing the standard foreign tax credit for income taxes paid to a nation in which foreign income was earned. Generally, a company is allowed a foreign tax credit against its U.S. taxes to the extent that it pays income tax to a foreign government. Many major oil producing countries have a low (or no) generally applicable income tax, but do have a high income tax on oil companies. U.S. law for many decades has allowed businesses to claim a foreign tax credit for the amount their payment to a foreign government exceeds the generally applicable tax. The current bill takes the view that the additional tax charged on energy income by the foreign government is not an income tax, but is actually a business expense. While this expense could then be deducted, the result would be double income taxation on a significant portion of the oil company's foreign income.

Section 202 – Limitation on Section 199 Deduction Attributable to Oil, Natural Gas, or Primary Products Thereof

This section amends 26 U.S.C. § 199(c)(4) to repeal the availability of the domestic production activities tax deduction for major integrated oil companies in connection with their production of oil and gas.

Section 203 – Limitation on Deduction for Intangible Drilling and Development Costs

This section amends 26 U.S.C. § 263(c) to repeal the availability of the tax deduction for major integrated oil companies in connection with their intangible drilling and development costs (capital expenditures) associated with the production of oil and gas.

Section 204 – Limitation on Percentage Depletion Allowance for Oil and Gas Wells

This section amends 26 U.S.C. § 613A to repeal the availability of the percentage depletion allowance for major integrated oil companies in connection with the production of oil and gas. (In its current form, the percentage depletion allowance is limited to domestic U.S. production by independent producers, on the first 1,000 barrels per day per well of production, and is limited to 65 percent of the producer's net income. This allowance was eliminated for the major oil companies in 1975.)

Section 205 – Limitation on Deduction for Tertiary Injectants

This section amends 26 U.S.C. § 193 to repeal the availability of the tax deduction for major integrated oil companies in connection with their qualified tertiary injectant expenses associated with the production of oil and gas.

Subtitle B – Outer Continental Shelf Oil and Natural Gas

Section 211 – Repeal of Outer Continental Shelf Deep Water and Deep Gas Royalty Relief

This section amends §§ 344 and 345 of the Energy Policy Act of 2005 (42 U.S.C. §§ 15904, 15905) to repeal the requirement that the Secretary of Interior provide royalty relief for natural gas produced from deep and ultra deep wells on leases issued in shallow waters of the Gulf of Mexico. This section also provides that the Secretary of Interior shall not be required to provide royalty relief in lease sale terms beginning with lease sales held on or after the date of enactment.

Title III – Budgetary Effects

Section 301 – Deficit Reduction

This provision provides for the net amount of any savings realized from enactment of this legislation to be applied toward reducing the federal budget deficit, or if none, the federal debt.

Section 302 – Budgetary Effects

For purposes of complying with the Statutory Pay-As-You-Go Act of 2010, this provision provides for the budgetary effects of this legislation to be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation," provided that the Chairman of the Senate Budget Committee submits such statement for printing in the Congressional Record prior to vote on passage.

Administration Position

The Obama Administration has not taken an official position on S. 2204.

Cost

The Joint Committee on Taxation estimates that S. 2204 will raise a net total of \$12.304 billion from 2012 to 2022 – repeal of oil and gas tax incentives will raise a total of \$23.998 billion from 2012 to 2022, and tax extensions relating to energy will cost \$11.694 billion over the same time.

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