

110TH CONGRESS  
2D SESSION

# S. 2971

To amend the Internal Revenue Code of 1986 to provide for a suspension of the highway fuel tax, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 2, 2008

Mr. REID (for Mrs. CLINTON (for herself and Mr. MENENDEZ)) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a suspension of the highway fuel tax, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. HIGHWAY FUEL TAX SUSPENSION.**

4 (a) TEMPORARY SUSPENSION OF HIGHWAY FUEL  
5 TAXES ON GASOLINE AND DIESEL FUEL.—

6 (1) IN GENERAL.—Section 4081 of the Internal  
7 Revenue Code of 1986 (relating to imposition of tax  
8 on gasoline, diesel fuel, and kerosene) is amended by  
9 adding at the end the following new subsection:

1       “(f) TEMPORARY SUSPENSION OF TAXES ON GASO-  
2 LINE AND DIESEL FUEL.—

3               “(1) IN GENERAL.—During the applicable pe-  
4 riod, each rate of tax referred to in paragraph (2)  
5 shall be reduced to zero cents per gallon.

6               “(2) RATES OF TAX.—The rates of tax referred  
7 to in this paragraph are—

8                       “(A) the rate of tax otherwise applicable to  
9 gasoline under clause (i) of subsection  
10 (a)(2)(A), determined with regard to subsection  
11 (a)(2)(B),

12                      “(B) the rate of tax otherwise applicable to  
13 diesel fuel under clause (iii) of subsection  
14 (a)(2)(A), determined with regard to subsection  
15 (a)(2)(B), and

16                      “(C) the rate of tax otherwise applicable to  
17 diesel fuel under paragraph (1) of section  
18 4041(a) with respect to fuel sold for use or  
19 used in a diesel-powered highway vehicle.

20               “(3) APPLICABLE PERIOD.—For purposes of  
21 this subsection, the term ‘applicable period’ means  
22 the period beginning on May 26, 2008, and ending  
23 on September 1, 2008.

24               “(4) MAINTENANCE OF TRUST FUND DEPOS-  
25 ITS.—In determining the amounts to be appro-

1        priated to the Highway Trust Fund under section  
 2        9503 and to the Leaking Underground Storage  
 3        Tank Trust Fund under 9508, an amount equal to  
 4        the reduction in revenues to the Treasury by reason  
 5        of this subsection shall be treated as taxes received  
 6        in the Treasury under this section or section 4041.”.

7            (2) EFFECTIVE DATE.—The amendment made  
 8        by this subsection shall take effect on the date of the  
 9        enactment of this Act.

10        (b) FLOOR STOCK REFUNDS.—

11            (1) IN GENERAL.—If—

12                    (A) before the tax suspension date, a tax  
 13                    referred to in section 4081(f)(2) of the Internal  
 14                    Revenue Code of 1986 has been imposed under  
 15                    such Code on any liquid, and

16                    (B) on such date such liquid is held by a  
 17                    dealer and has not been used and is intended  
 18                    for sale,

19        there shall be credited or refunded (without interest)  
 20        to the person who paid such tax (hereafter in this  
 21        subsection referred to as the “taxpayer”), against  
 22        the taxpayer’s subsequent semi-monthly deposit of  
 23        such tax, an amount equal to the excess of the tax  
 24        paid by the taxpayer over the amount of such tax

1 which would be imposed on such liquid had the tax-  
2 able event occurred on the tax suspension date.

3 (2) TIME FOR FILING CLAIMS; CERTIFICATIONS  
4 NECESSARY TO FILE CLAIMS.—

5 (A) IN GENERAL.—No credit or refund  
6 shall be allowed or made under this sub-  
7 section—

8 (i) unless claim therefore is filed with  
9 the Secretary before the date which is 6  
10 months after the tax suspension date, and

11 (ii) in any case where liquid is held by  
12 a dealer (other than the taxpayer) on the  
13 tax suspension date, unless the taxpayer  
14 files with the Secretary—

15 (I) a certification that the tax-  
16 payer has given a credit to such deal-  
17 er with respect to such liquid against  
18 the dealer's first purchase of liquid  
19 from the taxpayer subsequent to the  
20 tax suspension date, and

21 (II) a certification by such dealer  
22 that such dealer has given a credit to  
23 a succeeding dealer (if any) with re-  
24 spect to such liquid against the suc-  
25 ceeding dealer's first purchase of liq-

1                   uid from such dealer subsequent to  
2                   the tax suspension date.

3                   (B) REASONABLENESS OF CLAIMS CER-  
4                   TIFIED.—Any certification made under sub-  
5                   paragraph (A) shall include an additional cer-  
6                   tification that the claim for credit was reason-  
7                   ably based on the taxpayer’s or dealer’s past  
8                   business relationship with the succeeding deal-  
9                   er.

10                  (3) DEFINITIONS.—For purposes of this sub-  
11                  section—

12                   (A) the terms “dealer” and “held by a  
13                   dealer” have the respective meanings given to  
14                   such terms by section 6412 of such Code; ex-  
15                   cept that the term “dealer” includes a pro-  
16                   ducer, and

17                   (B) the term “tax suspension date” means  
18                   May 26, 2008.

19                  (4) CERTAIN RULES TO APPLY.—Rules similar  
20                  to the rules of subsections (b) and (c) of section  
21                  6412 of such Code shall apply for purposes of this  
22                  subsection.

23                  (c) FLOOR STOCKS TAX.—

24                   (1) IMPOSITION OF TAX.—In the case of any  
25                   liquid on which tax would have been imposed under

1 section 4081 of the Internal Revenue Code of 1986  
 2 during the applicable period but for the amendment  
 3 made by subsection (a), and which is held on the  
 4 floor stocks tax date by any person, there is hereby  
 5 imposed a floor stocks tax in an amount equal to the  
 6 tax which would be imposed on such liquid had the  
 7 taxable event occurred on the floor stocks tax date.

8 (2) LIABILITY FOR TAX AND METHOD OF PAY-  
 9 MENT.—

10 (A) LIABILITY FOR TAX.—A person hold-  
 11 ing a liquid on the floor stocks tax date to  
 12 which the tax imposed by paragraph (1) applies  
 13 shall be liable for such tax.

14 (B) METHOD OF PAYMENT.—The tax im-  
 15 posed by paragraph (1) shall be paid in such  
 16 manner as the Secretary shall prescribe.

17 (C) TIME FOR PAYMENT.—The tax im-  
 18 posed by paragraph (1) shall be paid on or be-  
 19 fore the date which is 6 months after the floor  
 20 stocks tax date.

21 (3) DEFINITIONS.—For purposes of this sub-  
 22 section—

23 (A) HELD BY A PERSON.—A liquid shall  
 24 be considered as “held by a person” if title

1           thereto has passed to such person (whether or  
2           not delivery to the person has been made).

3           (B) GASOLINE AND DIESEL FUEL.—The  
4           terms “gasoline” and “diesel fuel” have the re-  
5           spective meanings given such terms by section  
6           4083 of such Code.

7           (C) FLOOR STOCKS TAX DATE.—The term  
8           “floor stocks tax date” means September 2,  
9           2008.

10          (D) APPLICABLE PERIOD.—The term “ap-  
11          plicable period” means the period described in  
12          section 4081(f)(3) of such Code.

13          (4) EXCEPTION FOR EXEMPT USES.—The tax  
14          imposed by paragraph (1) shall not apply to gasoline  
15          or diesel fuel held by any person exclusively for any  
16          use to the extent a credit or refund of the tax im-  
17          posed by section 4081 of such Code is allowable for  
18          such use.

19          (5) EXCEPTION FOR FUEL HELD IN VEHICLE  
20          TANK.—No tax shall be imposed by paragraph (1)  
21          on gasoline or diesel fuel held in the tank of a motor  
22          vehicle.

23          (6) EXCEPTION FOR CERTAIN AMOUNTS OF  
24          FUEL.—

1 (A) IN GENERAL.—No tax shall be im-  
2 posed by paragraph (1)—

3 (i) on gasoline (other than aviation  
4 gasoline) held on the floor stocks tax date  
5 by any person if the aggregate amount of  
6 gasoline held by such person on such date  
7 does not exceed 4,000 gallons, and

8 (ii) on diesel fuel held on such date by  
9 any person if the aggregate amount of die-  
10 sel fuel held by such person on such date  
11 does not exceed 2,000 gallons.

12 The preceding sentence shall apply only if such  
13 person submits to the Secretary (at the time  
14 and in the manner required by the Secretary)  
15 such information as the Secretary shall require  
16 for purposes of this subparagraph.

17 (B) EXEMPT FUEL.—For purposes of sub-  
18 paragraph (A), there shall not be taken into ac-  
19 count fuel held by any person which is exempt  
20 from the tax imposed by paragraph (1) by rea-  
21 son of paragraph (4) or (5).

22 (C) CONTROLLED GROUPS.—For purposes  
23 of this paragraph—

24 (i) CORPORATIONS.—



1 (I) IN GENERAL.—All persons  
 2 treated as a controlled group shall be  
 3 treated as 1 person.

4 (II) CONTROLLED GROUP.—The  
 5 term “controlled group” has the  
 6 meaning given to such term by sub-  
 7 section (a) of section 1563 of such  
 8 Code; except that for such purposes  
 9 the phrase “more than 50 percent”  
 10 shall be substituted for the phrase “at  
 11 least 80 percent” each place it ap-  
 12 pears in such subsection.

13 (ii) NONINCORPORATED PERSONS  
 14 UNDER COMMON CONTROL.—Under regula-  
 15 tions prescribed by the Secretary, prin-  
 16 ciples similar to the principles of clause (i)  
 17 shall apply to a group of persons under  
 18 common control where 1 or more of such  
 19 persons is not a corporation.

20 (7) OTHER LAW APPLICABLE.—All provisions of  
 21 law, including penalties, applicable with respect to  
 22 the taxes imposed by section 4081 of such Code  
 23 shall, insofar as applicable and not inconsistent with  
 24 the provisions of this paragraph, apply with respect  
 25 to the floor stock taxes imposed by paragraph (1) to

1 the same extent as if such taxes were imposed by  
2 such section 4081.

3 (d) SECRETARY.—For purposes of this section, the  
4 term “Secretary” means the Secretary of the Treasury or  
5 the Secretary’s delegate.

6 (e) PASSTHROUGH TO CONSUMERS.—

7 (1) SENSE OF CONGRESS.—It is the senses of  
8 Congress that—

9 (A) consumers immediately receive the  
10 benefit of the reduction in taxes resulting from  
11 the amendment made by subsection (a), and

12 (B) transportation motor fuels producers  
13 and other dealers take such actions as nec-  
14 essary to reduce transportation motor fuels  
15 prices to reflect such reduction, including imme-  
16 diate credits to customer accounts representing  
17 tax refunds allowed as credits against excise tax  
18 deposit payments under the floor stocks refund  
19 provisions of subsection (b).

20 (2) STUDY AND ENFORCEMENT.—The Federal  
21 Trade Commission and the Commodities Futures  
22 Trading Commission shall use all applicable authori-  
23 ties to monitor oil, diesel, and gasoline markets to  
24 ensure that the benefit of the reduction in taxes re-

1       sulting from the amendment made by subsection (a)  
 2       is received by consumers.

3   **SEC. 2. TEMPORARY OIL PROFIT FEE.**

4       (a) IN GENERAL.—Subtitle E of the Internal Rev-  
 5   enue Code of 1986 (relating to alcohol, tobacco, and cer-  
 6   tain other excise taxes) is amended by adding at the end  
 7   thereof the following new chapter:

8           **“CHAPTER 56—TEMPORARY FEE ON**  
 9                   **EXCESS OIL PROFIT**

“Sec. 5896. Imposition of fee.

“Sec. 5897. Excess profit; etc.

“Sec. 5898. Special rules and definitions.

10   **“SEC. 5896. IMPOSITION OF FEE.**

11       “(a) IN GENERAL.—In addition to any other tax im-  
 12   posed under this title, there is hereby imposed on any ap-  
 13   plicable taxpayer an excise fee in an amount equal to 50  
 14   percent of the excess profit of such taxpayer for any tax-  
 15   able year beginning during 2008.

16       “(b) APPLICABLE TAXPAYER.—For purposes of this  
 17   chapter, the term ‘applicable taxpayer’ means, with re-  
 18   spect to operations in the United States—

19           “(1) any integrated oil company (as defined in  
 20       section 291(b)(4)), and

21           “(2) any other producer or refiner of crude oil  
 22       with gross receipts from the sale of such crude oil  
 23       or refined oil products for the taxable year exceeding  
 24       \$1,000,000,000.

1   **“SEC. 5897. EXCESS PROFIT; ETC.**

2           “(a) GENERAL RULE.—For purposes of this chapter,  
3 the term ‘excess profit’ means the excess of the adjusted  
4 taxable income of the applicable taxpayer for the taxable  
5 year over the reasonably inflated average profit for such  
6 taxable year.

7           “(b) ADJUSTED TAXABLE INCOME.—For purposes of  
8 this chapter, with respect to any applicable taxpayer, the  
9 adjusted taxable income for any taxable year is equal to  
10 the taxable income for such taxable year (within the mean-  
11 ing of section 63 and determined without regard to this  
12 subsection) increased by any interest expense deduction,  
13 charitable contribution deduction, and any net operating  
14 loss deduction carried forward from any prior taxable  
15 year. In the case of any applicable taxpayer which is a  
16 foreign corporation, the adjusted taxable income shall be  
17 determined with respect to such income which is effectively  
18 connected with the conduct of a trade or business in the  
19 United States.

20           “(c) REASONABLY INFLATED AVERAGE PROFIT.—  
21 For purposes of this chapter, with respect to any applica-  
22 ble taxpayer, the reasonably inflated average profit for any  
23 taxable year is an amount equal to the average of the ad-  
24 justed taxable income of such taxpayer for taxable years  
25 beginning during the 2000–2004 taxable year period (de-  
26 termined without regard to the taxable year with the high-

1 est adjusted taxable income in such period) plus 10 per-  
 2 cent of such average.

3 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

4       “(a) WITHHOLDING AND DEPOSIT OF FEE.—The  
 5 Secretary shall provide such rules as are necessary for the  
 6 withholding and deposit of the fee imposed under section  
 7 5896.

8       “(b) RECORDS AND INFORMATION.—Each taxpayer  
 9 liable for tax under section 5896 shall keep such records,  
 10 make such returns, and furnish such information as the  
 11 Secretary may by regulations prescribe.

12       “(c) RETURN OF FEE.—The Secretary shall provide  
 13 for the filing and the time of such filing of the return of  
 14 the fee imposed under section 5896.

15       “(d) CRUDE OIL.—The term ‘crude oil’ includes  
 16 crude oil condensates and natural gasoline.

17       “(e) BUSINESSES UNDER COMMON CONTROL.—For  
 18 purposes of this chapter, all members of the same con-  
 19 trolled group of corporations (within the meaning of sec-  
 20 tion 267(f)) and all persons under common control (within  
 21 the meaning of section 52(b) but determined by treating  
 22 an interest of more than 50 percent as a controlling inter-  
 23 est) shall be treated as 1 person.

1       “(f) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary or appropriate to  
3 carry out the purposes of this chapter.”.

4       (b) CLERICAL AMENDMENT.—The table of chapters  
5 for subtitle E of the Internal Revenue Code of 1986 is  
6 amended by adding at the end the following new item:

“CHAPTER 56—TEMPORARY FEE ON EXCESS OIL PROFIT”.

7       (c) DEDUCTIBILITY OF FEE.—The first sentence of  
8 section 164(a) of the Internal Revenue Code of 1986 (re-  
9 lating to deduction for taxes) is amended by inserting  
10 after paragraph (5) the following new paragraph:

11               “(6) The fee imposed by section 5896.”.

12       (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning in 2008.

14 **SEC. 3. SUSPENSION OF PETROLEUM ACQUISITION FOR**  
15 **STRATEGIC PETROLEUM RESERVE.**

16       (a) IN GENERAL.—Except as provided in subsection  
17 (b) and notwithstanding any other provision of law, during  
18 the period beginning on the date of enactment of this Act  
19 and ending on December 31, 2008, the Secretary of En-  
20 ergy shall suspend acquisition of petroleum for the Stra-  
21 tegic Petroleum Reserve through the royalty-in-kind pro-  
22 gram or any other acquisition method.

23       (b) RESUMPTION.—The Secretary of Energy may re-  
24 sume acquisition of petroleum for the Strategic Petroleum  
25 Reserve through the royalty-in-kind program or any other

1 acquisition method under subsection (a) not earlier than  
2 30 days after the date on which the Secretary notifies  
3 Congress that the Secretary has determined that the  
4 weighted average price of petroleum in the United States  
5 for the most recent 90-day period is \$75 or less per barrel.

6 **SEC. 4. PRICE GOUGING AND MARKET MANIPULATION.**

7       The Federal Trade Commission and the Commodities  
8 Futures Trading Commission shall use all applicable au-  
9 thorities to monitor oil, diesel, and gasoline markets to  
10 prevent price gouging and market manipulation in such  
11 markets.

○