

111TH CONGRESS
1ST SESSION

S. 1588

To amend the Internal Revenue Code of 1986 to provide the same tax treatment for both commercial and noncommercial investors in oil and natural gas and related commodities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide the same tax treatment for both commercial and non-commercial investors in oil and natural gas and related commodities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Tax-breaks for
5 Oil Profiteering Act” or the “STOP Act”.

1 **SEC. 2. CAPITAL GAIN OR LOSS FROM SALE OR EXCHANGE**
 2 **OF OIL OR NATURAL GAS AND RELATED COM-**
 3 **MODITIES TREATED AS SHORT-TERM CAP-**
 4 **ITAL GAIN OR LOSS.**

5 (a) GAIN OR LOSS ON APPLICABLE COMMODITIES.—

6 (1) IN GENERAL.—Part IV of subchapter P of
 7 chapter 1 of the Internal Revenue Code of 1986 (re-
 8 lating to special rules for determining capital gains
 9 and losses) is amended by adding at the end the fol-
 10 lowing new section:

11 **“SEC. 1261. CAPITAL GAIN OR LOSS FROM SALE OR EX-**
 12 **CHANGE OF OIL OR NATURAL GAS AND RE-**
 13 **LATED COMMODITIES TREATED AS SHORT-**
 14 **TERM CAPITAL GAIN OR LOSS.**

15 “(a) GENERAL RULE.—If a taxpayer has gain or loss
 16 from the sale or exchange of any applicable commodity
 17 which, without regard to this section, would be treated as
 18 long-term capital gain or loss, such gain or loss shall, not-
 19 withstanding any other provision of this title, be treated
 20 as short-term capital gain or loss.

21 “(b) APPLICABLE COMMODITY.—For purposes of
 22 this section—

23 “(1) IN GENERAL.—The term ‘applicable com-
 24 modity’ means—

25 “(A) oil or natural gas (or any primary
 26 product of oil or natural gas) which is actively

1 traded (within the meaning of section
2 1092(d)(1)),

3 “(B) a specified index (within the meaning
4 of section 1221(b)(1)(B)(ii)) a substantial por-
5 tion of which is, as of the date the taxpayer ac-
6 quires its position with respect to such specified
7 index, based on 1 or more commodities de-
8 scribed in subparagraph (A),

9 “(C) any notional principal contract with
10 respect to any commodity described in subpara-
11 graph (A) or (B), and

12 “(D) any evidence of an interest in, or a
13 derivative instrument in, any commodity de-
14 scribed in subparagraph (A), (B), or (C), in-
15 cluding any option, forward contract, futures
16 contract, short position, and any similar instru-
17 ment in such a commodity.

18 “(2) EXCEPTION FOR CERTAIN SECTION 1256
19 CONTRACTS.—Such term shall not include a section
20 1256 contract (as defined in section 1256(b)) which
21 is required to be marked to market under section
22 1256(a).

23 “(c) SPECIAL RULE FOR CERTAIN PARTNERSHIP IN-
24 TERESTS.—For purposes of this section, if a taxpayer rec-
25 ognizes gain or loss on the sale or exchange of any interest

1 in a partnership, the portion of such gain or loss which
2 is attributable to unrecognized gain or loss with respect
3 to 1 or more applicable commodities shall be treated as
4 short-term capital gain or loss. The preceding sentence
5 shall not apply if the taxpayer is otherwise required to
6 treat such portion of gain or loss as ordinary income or
7 loss.

8 “(d) APPLICATION.—This section shall apply to any
9 applicable commodity acquired after August 31, 2009, and
10 before January 1, 2014.”.

11 (2) CONFORMING AMENDMENTS.—

12 (A) Section 1222 of such Code is amended
13 by striking the last sentence thereof.

14 (B) The table of sections for part IV of
15 subchapter P of chapter 1 of such Code is
16 amended by adding at the end the following
17 new item:

“Sec. 1261. Capital gain or loss from sale or exchange of oil or natural gas and
related commodities treated as short-term capital gain or
loss.”.

18 (b) APPLICATION TO SECTION 1256 CONTRACTS.—

19 (1) IN GENERAL.—Section 1256(f) of the Inter-
20 nal Revenue Code of 1986 (relating to special rules)
21 is amended by adding at the end the following new
22 paragraph:

23 “(6) SPECIAL RULES FOR CERTAIN COMMODITY
24 CONTRACTS.—

1 “(A) ALL GAIN OR LOSS FROM COMMODITY
2 CONTRACTS TREATED AS SHORT-TERM GAIN OR
3 LOSS.—In the case of a section 1256 contract
4 which is an applicable commodity, subsection
5 (a)(3) shall be applied to any gain or loss with
6 respect to such contract—

7 “(i) by substituting ‘100 percent’ for
8 ‘40 percent’ in subparagraph (A) thereof,
9 and

10 “(ii) without regard to subparagraph
11 (B) thereof.

12 “(B) TREATMENT OF MIXED STRAD-
13 DLES.—A taxpayer may not make an election
14 under subsection (d), or an election under the
15 regulations prescribed pursuant to section
16 1092(b)(2), with respect to any mixed straddle
17 if any position forming a part of such straddle
18 is a section 1256 contract which is an applica-
19 ble commodity. For purposes of this subpara-
20 graph, if any section 1256 contract which is
21 part of a straddle is an applicable commodity,
22 any other section 1256 contract which is part
23 of such straddle shall be treated as an applica-
24 ble commodity.

1 “(C) APPLICABLE COMMODITY.—For pur-
2 poses of this paragraph, the term ‘applicable
3 commodity’ has the meaning given such term by
4 section 1261(b), except that such section shall
5 be applied without regard to paragraph (2)
6 thereof.

7 “(D) APPLICATION.—This paragraph shall
8 apply to any applicable commodity acquired
9 after August 31, 2009, and before January 1,
10 2014.”.

11 (2) SPECIAL RULE FOR LOSS CARRYBACKS.—
12 Section 1212(c) of such Code (relating to carryback
13 of losses from section 1256 contracts to offset prior
14 gains from such contracts) is amended by redesign-
15 ating paragraph (7) as paragraph (8) and by in-
16 serting after paragraph (6) the following new para-
17 graph:

18 “(7) SPECIAL RULE FOR LOSSES ALL OF WHICH
19 ARE TREATED AS SHORT-TERM.—If any portion of
20 the net section 1256 contracts loss for any taxable
21 year is attributable to a net loss from contracts to
22 which section 1256(f)(6) applies—

23 “(A) this subsection shall be applied first
24 to such portion of such net section 1256 con-

1 tracts loss and then to the remainder of such
2 loss, and

3 “(B) in applying this subsection to such
4 portion—

5 “(i) notwithstanding paragraph
6 (1)(B), all of the loss attributable to such
7 portion and allowed as a carryback shall be
8 treated as a short-term capital loss, and

9 “(ii) notwithstanding paragraph
10 (6)(A), all of the loss attributable to such
11 portion and allowed as a carryback shall be
12 treated for purposes of applying paragraph
13 (6) as a short-term capital gain for the
14 loss year.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to applicable commodities acquired
17 after August 31, 2009, in taxable years ending after such
18 date.

19 **SEC. 3. GAINS AND LOSSES FROM OIL AND NATURAL GAS**
20 **AND RELATED COMMODITIES TREATED AS**
21 **UNRELATED BUSINESS TAXABLE INCOME.**

22 (a) IN GENERAL.—Section 512(b) of the Internal
23 Revenue Code of 1986 (relating to modifications to unre-
24 lated business taxable income) is amended by adding at
25 the end the following new paragraph:

1 “(20) TREATMENT OF GAINS OR LOSSES FROM
2 COMMODITIES.—

3 “(A) IN GENERAL.—Notwithstanding para-
4 graph (5) or any other provision of this part—

5 “(i) income, gain, or loss of an organi-
6 zation with respect to any applicable com-
7 modity shall not be excluded but shall be
8 taken into account as income, gain, or loss
9 from an unrelated trade or business, and

10 “(ii) all deductions directly connected
11 with such income or gain shall be allowed.

12 “(B) EXCEPTION FOR ORDINARY INCOME
13 AND LOSSES.—Subparagraph (A) shall not
14 apply to any income, gain, or loss of an organi-
15 zation which, if not excluded under this title
16 and without regard to subparagraph (A), would
17 be treated as ordinary income or loss.

18 “(C) LOOK-THRU IN THE CASE OF FOR-
19 EIGN CORPORATIONS.—

20 “(i) IN GENERAL.—If an organization
21 owns directly or indirectly stock in a for-
22 eign corporation, the organization’s pro
23 rata share of any income, gain, or loss of
24 such corporation (and any deductions di-
25 rectly connected with such income or gain)

1 with respect to 1 or more applicable com-
2 modities shall be taken into account under
3 subparagraph (A) in the same manner as
4 if such commodities were held directly by
5 the organization. Any such item shall be
6 taken into account for the taxable year of
7 the organization in which the item arises
8 without regard to whether there was an ac-
9 tual distribution to the organization with
10 respect to the item. For purposes of this
11 clause, the rule under section 1261(c) shall
12 apply in determining the income, gain, or
13 loss of the foreign corporation with respect
14 to applicable commodities.

15 “(ii) SALE OF INTERESTS IN COR-
16 PORATION.—If a taxpayer recognizes gain
17 or loss on the sale or exchange of any
18 share of stock in a foreign corporation, the
19 portion of such gain or loss which is attrib-
20 utable to unrecognized gain or loss with re-
21 spect to 1 or more applicable commodities
22 shall be taken into account under subpara-
23 graph (A) in the same manner as if such
24 commodities were sold or exchanged di-
25 rectly by the organization.

1 “(iii) NO DOUBLE COUNTING.—The
2 Secretary shall prescribe such rules as are
3 necessary to ensure that any item of in-
4 come, gain, loss, or deduction described in
5 clause (i) or (ii) is taken into account only
6 once for purposes of this paragraph.

7 “(D) APPLICABLE COMMODITY.—For pur-
8 poses of this paragraph, the term ‘applicable
9 commodity’ has the meaning given such term by
10 section 1261(b), except that such section shall
11 be applied without regard to paragraph (2)
12 thereof.

13 “(E) REGULATIONS.—The Secretary shall
14 prescribe such regulations as are necessary to
15 carry out the provisions of this paragraph, in-
16 cluding regulations—

17 “(i) to prevent the avoidance of the
18 purposes of this paragraph through the use
19 of pass-thru entities or tiered structures,
20 and

21 “(ii) to provide that this paragraph
22 shall not apply to ownership interests of
23 organizations in foreign corporations in
24 cases where the income or gain of the for-
25 eign corporation from any applicable com-

1 modity is otherwise subject to tax imposed
2 by this chapter.

3 “(F) APPLICATION.—This paragraph shall
4 apply to any applicable commodity acquired
5 after August 31, 2009, and before January 1,
6 2014.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to applicable commodities acquired
9 after August 31, 2009, in taxable years ending after such
10 date.

11 **SEC. 4. STUDY OF TAX TREATMENT OF COMMODITIES AND**
12 **SECTION 1256 CONTRACTS.**

13 (a) STUDY.—The Secretary of the Treasury, or the
14 Secretary’s delegate, shall conduct a study of the Federal
15 income tax treatment of section 1256 contracts under sec-
16 tion 1256 of the Internal Revenue Code of 1986 and of
17 applicable commodities under sections 1261, 1256(f)(6),
18 and 512(b)(20) of such Code. Such study shall include an
19 analysis of—

20 (1) the average annual number of sales or ex-
21 changes of such contracts and commodities, includ-
22 ing the number of sales and exchanges involving or-
23 ganizations exempt from Federal income taxation
24 under such Code,

1 (2) whether the amendments made by this Act
2 have had any effect on the number or type of such
3 sales and exchanges,

4 (3) the effect of tax policy on the operation of
5 the commodities exchanges and on the demand for,
6 and price of, commodities, particularly with respect
7 to oil and natural gas, and

8 (4) such other matters with respect to such tax
9 treatment as the Secretary determines appropriate.

10 (b) REPORT.—The Secretary shall, not later than
11 January 1, 2012, report the results of the study conducted
12 under subsection (a) to the Committee on Finance of the
13 Senate and the Committee on Ways and Means of the
14 House of Representatives, together with such legislative
15 recommendations as the Secretary determines appropriate
16 with respect to the Federal income tax treatment of sec-
17 tion 1256 contracts and applicable commodities.

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