

113TH CONGRESS
1ST SESSION

S. 278

To replace the Budget Control Act sequester for fiscal year 2013 by eliminating tax loopholes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2013

Mr. WHITEHOUSE (for himself, Mr. HARKIN, Mr. SANDERS, Mr. LEVIN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To replace the Budget Control Act sequester for fiscal year 2013 by eliminating tax loopholes.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Job Preservation and Sequester Replacement Act of
6 2013”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ELIMINATION OF SEQUESTRATION FOR FISCAL YEAR
2013

Sec. 101. No sequestration for 2013.

TITLE II—ELIMINATION OF TAX LOOPHOLES FOR HIGH-INCOME
TAXPAYERS

Sec. 201. Minimum tax for high-income earners.

Sec. 202. Requiring high-income professionals to pay their payroll taxes.

Sec. 203. Elimination of private jet giveaway.

TITLE III—ELIMINATION OF TAX LOOPHOLES FOR OFFSHORING
MANUFACTURERS

Sec. 301. Ending tax breaks for offshoring manufacturers.

TITLE IV—ELIMINATION OF TAX LOOPHOLES FOR OIL AND GAS
COMPANIES

Sec. 401. Modifications of foreign tax credit rules applicable to major integrated oil companies which are dual capacity taxpayers.

Sec. 402. Limitation on section 199 deduction attributable to oil, natural gas, or primary products thereof.

Sec. 403. Limitation on deduction for intangible drilling and development costs.

Sec. 404. Limitation on percentage depletion allowance for oil and gas wells.

Sec. 405. Limitation on deduction for tertiary injectants.

Sec. 406. Repeal of outer Continental Shelf deep water and deep gas royalty relief.

1 **TITLE I—ELIMINATION OF SE-**
2 **QUESTRATION FOR FISCAL**
3 **YEAR 2013**

4 **SEC. 101. NO SEQUESTRATION FOR 2013.**

5 (a) IN GENERAL.—Section 251A(3)(E) of the Bal-
6 anced Budget and Emergency Deficit Control Act of 1985
7 (2 U.S.C. 901a(3)(E)) is amended by striking
8 “\$24,000,000,000” and inserting “\$109,300,000,000”.

9 (b) REPEAL OF BUDGET CONTROL ACT SEQUESTER
10 FOR FISCAL YEAR 2013.—

11 (1) REPEAL.—Section 901(e) of the American
12 Taxpayer Relief Act of 2012 (Public Law 112–240)
13 is repealed.

1 (2) BBEDCA.—Section 251A of the Balanced
2 Budget and Emergency Deficit Control Act (2
3 U.S.C. 901a) is amended—

4 (A) in paragraph (4), by striking “On
5 March 1, 2013, for fiscal year 2013, and in”
6 and inserting “In”;

7 (B) in paragraph (5), by striking “2013”
8 and inserting “2014”;

9 (C) in paragraph (6), by striking “2013”
10 and inserting “2014”; and

11 (D) in paragraph (7)—

12 (i) by striking “REDUCTIONS.—” and
13 all that follows through “On the date of
14 the submission” and inserting “REDUC-
15 TIONS.—On the date of the submission”;
16 and

17 (ii) by redesignating clauses (i) and
18 (ii) as subparagraphs (A) and (B), respec-
19 tively.

20 **TITLE II—ELIMINATION OF TAX**
21 **LOOPHOLES FOR HIGH-IN-**
22 **COME TAXPAYERS**

23 **SEC. 201. MINIMUM TAX FOR HIGH-INCOME EARNERS.**

24 (a) IN GENERAL.—Subchapter A of chapter 1 is
25 amended by adding at the end the following new part:

1 **“PART VIII—FAIR SHARE TAX ON HIGH-INCOME**
 2 **TAXPAYERS**

“Sec. 59B. Fair share tax.

3 **“SEC. 59B. FAIR SHARE TAX.**

4 “(a) GENERAL RULE.—

5 “(1) PHASE-IN OF TAX.—In the case of any
 6 high-income taxpayer, there is hereby imposed for a
 7 taxable year (in addition to any other tax imposed
 8 by this subtitle) a tax equal to the product of—

9 “(A) the amount determined under para-
 10 graph (2), and

11 “(B) a fraction (not to exceed 1)—

12 “(i) the numerator of which is the ex-
 13 cess of—

14 “(I) the taxpayer’s adjusted
 15 gross income, over

16 “(II) the dollar amount in effect
 17 under subsection (c)(1), and

18 “(ii) the denominator of which is the
 19 dollar amount in effect under subsection
 20 (c)(1).

21 “(2) AMOUNT OF TAX.—The amount of tax de-
 22 termined under this paragraph is an amount equal
 23 to the excess (if any) of—

24 “(A) the tentative fair share tax for the
 25 taxable year, over

1 “(B) the excess of—

2 “(i) the sum of—

3 “(I) the regular tax liability (as
4 defined in section 26(b)) for the tax-
5 able year, determined without regard
6 to any tax liability determined under
7 this section,

8 “(II) the tax imposed by section
9 55 for the taxable year, plus

10 “(III) the payroll tax for the tax-
11 able year, over

12 “(ii) the credits allowable under part
13 IV of subchapter A (other than sections
14 27(a), 31, and 34).

15 “(b) TENTATIVE FAIR SHARE TAX.—For purposes
16 of this section—

17 “(1) IN GENERAL.—The tentative fair share tax
18 for the taxable year is 30 percent of the excess of—

19 “(A) the adjusted gross income of the tax-
20 payer, over

21 “(B) the modified charitable contribution
22 deduction for the taxable year.

23 “(2) MODIFIED CHARITABLE CONTRIBUTION
24 DEDUCTION.—For purposes of paragraph (1)—

1 “(A) IN GENERAL.—The modified chari-
2 table contribution deduction for any taxable
3 year is an amount equal to the amount which
4 bears the same ratio to the deduction allowable
5 under section 170 (section 642(c) in the case of
6 a trust or estate) for such taxable year as—

7 “(i) the amount of itemized deduc-
8 tions allowable under the regular tax (as
9 defined in section 55) for such taxable
10 year, determined after the application of
11 section 68, bears to

12 “(ii) such amount, determined before
13 the application of section 68.

14 “(B) TAXPAYER MUST ITEMIZE.—In the
15 case of any individual who does not elect to
16 itemize deductions for the taxable year, the
17 modified charitable contribution deduction shall
18 be zero.

19 “(c) HIGH-INCOME TAXPAYER.—For purposes of this
20 section—

21 “(1) IN GENERAL.—The term ‘high-income tax-
22 payer’ means, with respect to any taxable year, any
23 taxpayer (other than a corporation) with an adjusted
24 gross income for such taxable year in excess of

1 \$1,000,000 (50 percent of such amount in the case
2 of a married individual who files a separate return).

3 “(2) INFLATION ADJUSTMENT.—

4 “(A) IN GENERAL.—In the case of a tax-
5 able year beginning after 2013, the \$1,000,000
6 amount under paragraph (1) shall be increased
7 by an amount equal to—

8 “(i) such dollar amount, multiplied by

9 “(ii) the cost-of-living adjustment de-
10 termined under section 1(f)(3) for the cal-
11 endar year in which the taxable year be-
12 gins, determined by substituting ‘calendar
13 year 2012’ for ‘calendar year 1992’ in sub-
14 paragraph (B) thereof.

15 “(B) ROUNDING.—If any amount as ad-
16 justed under subparagraph (A) is not a multiple
17 of \$10,000, such amount shall be rounded to
18 the next lowest multiple of \$10,000.

19 “(d) PAYROLL TAX.—For purposes of this section,
20 the payroll tax for any taxable year is an amount equal
21 to the excess of—

22 “(1) the taxes imposed on the taxpayer under
23 sections 1401, 1411, 3101, 3201, and 3211(a) (to
24 the extent such tax is attributable to the rate of tax
25 in effect under section 3101) with respect to such

1 taxable year or wages or compensation received dur-
2 ing such taxable year, over

3 “(2) the deduction allowable under section
4 164(f) for such taxable year.

5 “(e) SPECIAL RULE FOR ESTATES AND TRUSTS.—
6 For purposes of this section, in the case of an estate or
7 trust, adjusted gross income shall be computed in the
8 manner described in section 67(e).

9 “(f) NOT TREATED AS TAX IMPOSED BY THIS CHAP-
10 TER FOR CERTAIN PURPOSES.—The tax imposed under
11 this section shall not be treated as tax imposed by this
12 chapter for purposes of determining the amount of any
13 credit under this chapter (other than the credit allowed
14 under section 27(a)) or for purposes of section 55.”.

15 (b) CLERICAL AMENDMENT.—The table of parts for
16 subchapter A of chapter 1 is amended by adding at the
17 end the following new item:

“PART VIII—FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2012.

21 **SEC. 202. REQUIRING HIGH-INCOME PROFESSIONALS TO**
22 **PAY THEIR PAYROLL TAXES.**

23 (a) IN GENERAL.—Section 1402 of the Internal Rev-
24 enue Code of 1986 is amended by adding at the end the
25 following new subsection:

1 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
2 BUSINESSES.—

3 “(1) SHAREHOLDERS PROVIDING SERVICES TO
4 SPECIFIED S CORPORATIONS.—

5 “(A) IN GENERAL.—In the case of an ap-
6 plicable shareholder who provides substantial
7 services with respect to a professional service
8 business referred to in subparagraph (C) of a
9 specified S corporation—

10 “(i) such shareholder shall be treated
11 as engaged in the trade or business of such
12 professional service business with respect
13 to items of income or loss described in sec-
14 tion 1366 which are attributable to such
15 business, and

16 “(ii) such shareholder’s net earnings
17 from self-employment shall include such
18 shareholder’s pro rata share of such items
19 of income or loss, except that in computing
20 such pro rata share of such items the ex-
21 ceptions provided in subsection (a) shall
22 apply.

23 “(B) TREATMENT OF FAMILY MEMBERS.—
24 Except as otherwise provided by the Secretary,
25 the applicable shareholder’s pro rata share of

1 items referred to in subparagraph (A) shall be
2 increased by the pro rata share of such items
3 of each member of such applicable shareholder’s
4 family (within the meaning of section
5 318(a)(1)) who does not provide substantial
6 services with respect to such professional serv-
7 ice business.

8 “(C) SPECIFIED S CORPORATION.—For
9 purposes of this subsection, the term ‘specified
10 S corporation’ means—

11 “(i) any S corporation which is a
12 partner in a partnership which is engaged
13 in a professional service business if sub-
14 stantially all of the activities of such S cor-
15 poration are performed in connection with
16 such partnership, and

17 “(ii) any other S corporation which is
18 engaged in a professional service business
19 if 75 percent or more of the gross income
20 of such business is attributable to service
21 of 3 or fewer shareholders of such corpora-
22 tion.

23 “(D) APPLICABLE SHAREHOLDER.—For
24 purposes of this paragraph, the term ‘applicable
25 shareholder’ means any shareholder whose

1 modified adjusted gross income for the taxable
2 year exceeds—

3 “(i) in the case of a shareholder mak-
4 ing a joint return under section 6013 or a
5 surviving spouse (as defined in section
6 2(a)), \$250,000,

7 “(ii) in the case of a married share-
8 holder (as defined in section 7703) filing a
9 separate return, half of the dollar amount
10 determined under clause (i), and

11 “(iii) in any other case, \$200,000.

12 “(2) PARTNERS.—

13 “(A) IN GENERAL.—In the case of any
14 partnership which is engaged in a professional
15 service business, subsection (a)(13) shall not
16 apply to any applicable partner who provides
17 substantial services with respect to such profes-
18 sional service business.

19 “(B) APPLICABLE PARTNER.—For pur-
20 poses of this paragraph, the term ‘applicable
21 partner’ means any partner whose modified ad-
22 justed gross income for the taxable year ex-
23 ceeds—

24 “(i) in the case of a partner making
25 a joint return under section 6013 or a sur-

1 viving spouse (as defined in section 2(a)),
2 \$250,000,

3 “(ii) in the case of a married partner
4 (as defined in section 7703) filing a sepa-
5 rate return, half of the dollar amount de-
6 termined under clause (i), and

7 “(iii) in any other case, \$200,000.

8 “(3) PROFESSIONAL SERVICE BUSINESS.—For
9 purposes of this subsection, the term ‘professional
10 service business’ means any trade or business (or
11 portion thereof) providing services in the fields of
12 health, law, lobbying, engineering, architecture, ac-
13 counting, actuarial science, performing arts, con-
14 sulting, athletics, investment advice or management,
15 or brokerage services.

16 “(4) MODIFIED ADJUSTED GROSS INCOME.—
17 For purposes of this subsection, the term ‘modified
18 adjusted gross income’ means adjusted gross in-
19 come—

20 “(A) determined without regard to any de-
21 duction allowed under section 164(f), and

22 “(B) increased by the amount excluded
23 from gross income under section 911(a)(1).

24 “(5) REGULATIONS.—The Secretary shall pre-
25 scribe such regulations as may be necessary or ap-

1 appropriate to carry out the purposes of this sub-
2 section, including regulations which prevent the
3 avoidance of the purposes of this subsection through
4 tiered entities or otherwise.

5 “(6) CROSS REFERENCE.—For employment tax
6 treatment of wages paid to shareholders of S cor-
7 porations, see subtitle C.”.

8 (b) CONFORMING AMENDMENT.—Section 211 of the
9 Social Security Act is amended by adding at the end the
10 following new subsection:

11 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE
12 BUSINESSES.—

13 “(1) SHAREHOLDERS PROVIDING SERVICES TO
14 SPECIFIED S CORPORATIONS.—

15 “(A) IN GENERAL.—In the case of an ap-
16 plicable shareholder who provides substantial
17 services with respect to a professional service
18 business referred to in subparagraph (C) of a
19 specified S corporation—

20 “(i) such shareholder shall be treated
21 as engaged in the trade or business of such
22 professional service business with respect
23 to items of income or loss described in sec-
24 tion 1366 of the Internal Revenue Code of

1 1986 which are attributable to such busi-
2 ness, and

3 “(ii) such shareholder’s net earnings
4 from self-employment shall include such
5 shareholder’s pro rata share of such items
6 of income or loss, except that in computing
7 such pro rata share of such items the ex-
8 ceptions provided in subsection (a) shall
9 apply.

10 “(B) TREATMENT OF FAMILY MEMBERS.—

11 Except as otherwise provided by the Secretary
12 of the Treasury, the applicable shareholder’s
13 pro rata share of items referred to in subpara-
14 graph (A) shall be increased by the pro rata
15 share of such items of each member of such ap-
16 plicable shareholder’s family (within the mean-
17 ing of section 318(a)(1) of the Internal Revenue
18 Code of 1986) who does not provide substantial
19 services with respect to such professional serv-
20 ice business.

21 “(C) SPECIFIED S CORPORATION.—For
22 purposes of this subsection, the term ‘specified
23 S corporation’ means—

24 “(i) any S corporation (as defined in
25 section 1361(a) of the Internal Revenue

1 Code of 1986) which is a partner in a
2 partnership which is engaged in a profes-
3 sional service business if substantially all
4 of the activities of such S corporation are
5 performed in connection with such partner-
6 ship, and

7 “(ii) any other S corporation (as so
8 defined) which is engaged in a professional
9 service business if 75 percent or more of
10 the gross income of such business is attrib-
11 utable to service of 3 or fewer shareholders
12 of such corporation.

13 “(D) APPLICABLE SHAREHOLDER.—For
14 purposes of this paragraph, the term ‘applicable
15 shareholder’ means any shareholder whose
16 modified adjusted gross income for the taxable
17 year exceeds—

18 “(i) in the case of a shareholder mak-
19 ing a joint return under section 6013 of
20 the Internal Revenue Code of 1986 or a
21 surviving spouse (as defined in section 2(a)
22 of such Code), \$250,000,

23 “(ii) in the case of a married share-
24 holder (as defined in section 7703 of such
25 Code) filing a separate return, half of the

1 dollar amount determined under clause (i),
2 and
3 “(iii) in any other case, \$200,000.

4 “(2) PARTNERS.—

5 “(A) IN GENERAL.—In the case of any
6 partnership which is engaged in a professional
7 service business, subsection (a)(12) shall not
8 apply to any applicable partner who provides
9 substantial services with respect to such profes-
10 sional service business.

11 “(B) APPLICABLE PARTNER.—For pur-
12 poses of this paragraph, the term ‘applicable
13 partner’ means any partner whose modified ad-
14 justed gross income for the taxable year ex-
15 ceeds—

16 “(i) in the case of a partner making
17 a joint return under section 6013 of the
18 Internal Revenue Code of 1986 or a sur-
19 viving spouse (as defined in section 2(a) of
20 such Code), \$250,000,

21 “(ii) in the case of a married partner
22 (as defined in section 7703 of such Code)
23 filing a separate return, half of the dollar
24 amount determined under clause (i), and

25 “(iii) in any other case, \$200,000.

1 “(3) PROFESSIONAL SERVICE BUSINESS.—For
2 purposes of this subsection, the term ‘professional
3 service business’ means any trade or business (or
4 portion thereof) providing services in the fields of
5 health, law, lobbying, engineering, architecture, ac-
6 counting, actuarial science, performing arts, con-
7 sulting, athletics, investment advice or management,
8 or brokerage services.

9 “(4) MODIFIED ADJUSTED GROSS INCOME.—
10 For purposes of this subsection, the term ‘modified
11 adjusted gross income’ means adjusted gross income
12 as determined under section 62 of the Internal Rev-
13 enue Code of 1986—

14 “(A) determined without regard to any de-
15 duction allowed under section 164(f) of such
16 Code, and

17 “(B) increased by the amount excluded
18 from gross income under section 911(a)(1) of
19 such Code.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 December 31, 2012.

23 **SEC. 203. ELIMINATION OF PRIVATE JET GIVEAWAY.**

24 (a) IN GENERAL.—Subparagraph (C) of section
25 168(e)(3) of the Internal Revenue Code of 1986 is amend-

1 ed by striking “and” at the end of clause (iv), by redesignig-
2 nating clause (v) as clause (vi), and by inserting after
3 clause (iv) the following new clause:

4 “(v) any general aviation aircraft,
5 and”.

6 (b) CLASS LIFE.—Paragraph (3) of section 168(g)
7 of the Internal Revenue Code of 1986 is amended by in-
8 serting after subparagraph (E) the following new subpara-
9 graph:

10 “(F) GENERAL AVIATION AIRCRAFT.—In
11 the case of any general aviation aircraft, the re-
12 covery period used for purposes of paragraph
13 (2) shall be 12 years.”.

14 (c) GENERAL AVIATION AIRCRAFT.—Subsection (i)
15 of section 168 of the Internal Revenue Code of 1986 is
16 amended by inserting after paragraph (19) the following
17 new paragraph:

18 “(20) GENERAL AVIATION AIRCRAFT.—The
19 term ‘general aviation aircraft’ means any airplane
20 or helicopter (including airframes and engines) not
21 used in commercial or contract carrying of pas-
22 sengers or freight, but which primarily engages in
23 the carrying of passengers.”.

1 (d) EFFECTIVE DATE.—This section shall be effective for property placed in service after December 31, 2 2012.

4 **TITLE III—ELIMINATION OF TAX**
 5 **LOOPHOLES FOR OFFSHOR-**
 6 **ING MANUFACTURERS**

7 **SEC. 301. ENDING TAX BREAKS FOR OFFSHORING MANU-**
 8 **FACTURERS.**

9 (a) GENERAL RULE.—Subsection (a) of section 954
 10 of the Internal Revenue Code of 1986 is amended by striking
 11 the period at the end of paragraph (5) and inserting
 12 “, and”, by redesignating paragraph (5) as paragraph (4),
 13 and by adding at the end the following new paragraph:

14 “(5) imported property income for the taxable
 15 year (determined under subsection (j) and reduced
 16 as provided in subsection (b)(5)).”.

17 (b) DEFINITION OF IMPORTED PROPERTY IN-
 18 COME.—Section 954 of the Internal Revenue Code of 1986
 19 is amended by adding at the end the following new sub-
 20 section:

21 “(j) IMPORTED PROPERTY INCOME.—

22 “(1) IN GENERAL.—For purposes of subsection
 23 (a)(5), the term ‘imported property income’ means
 24 income (whether in the form of profits, commissions,
 25 fees, or otherwise) derived in connection with—

1 “(A) manufacturing, producing, growing,
2 or extracting imported property;

3 “(B) the sale, exchange, or other disposi-
4 tion of imported property; or

5 “(C) the lease, rental, or licensing of im-
6 ported property.

7 Such term shall not include any foreign oil and gas
8 extraction income (within the meaning of section
9 907(c)) or any foreign oil related income (within the
10 meaning of section 907(c)).

11 “(2) IMPORTED PROPERTY.—For purposes of
12 this subsection—

13 “(A) IN GENERAL.—Except as otherwise
14 provided in this paragraph, the term ‘imported
15 property’ means property which is imported
16 into the United States by the controlled foreign
17 corporation or a related person.

18 “(B) IMPORTED PROPERTY INCLUDES CER-
19 TAIN PROPERTY IMPORTED BY UNRELATED
20 PERSONS.—The term ‘imported property’ in-
21 cludes any property imported into the United
22 States by an unrelated person if, when such
23 property was sold to the unrelated person by
24 the controlled foreign corporation (or a related
25 person), it was reasonable to expect that—

1 “(i) such property would be imported
2 into the United States; or

3 “(ii) such property would be used as
4 a component in other property which would
5 be imported into the United States.

6 “(C) EXCEPTION FOR PROPERTY SUBSE-
7 QUENTLY EXPORTED.—The term ‘imported
8 property’ does not include any property which is
9 imported into the United States and which—

10 “(i) before substantial use in the
11 United States, is sold, leased, or rented by
12 the controlled foreign corporation or a re-
13 lated person for direct use, consumption,
14 or disposition outside the United States; or

15 “(ii) is used by the controlled foreign
16 corporation or a related person as a com-
17 ponent in other property which is so sold,
18 leased, or rented.

19 “(D) EXCEPTION FOR CERTAIN AGRICUL-
20 TURAL COMMODITIES.—The term ‘imported
21 property’ does not include any agricultural com-
22 modity which is not grown in the United States
23 in commercially marketable quantities.

24 “(3) DEFINITIONS AND SPECIAL RULES.—

1 “(A) IMPORT.—For purposes of this sub-
2 section, the term ‘import’ means entering, or
3 withdrawal from warehouse, for consumption or
4 use. Such term includes any grant of the right
5 to use intangible property (as defined in section
6 936(h)(3)(B)) in the United States.

7 “(B) UNITED STATES.—For purposes of
8 this subsection, the term ‘United States’ in-
9 cludes the Commonwealth of Puerto Rico, the
10 Virgin Islands of the United States, Guam,
11 American Samoa, and the Commonwealth of
12 the Northern Mariana Islands.

13 “(C) UNRELATED PERSON.—For purposes
14 of this subsection, the term ‘unrelated person’
15 means any person who is not a related person
16 with respect to the controlled foreign corpora-
17 tion.

18 “(D) COORDINATION WITH FOREIGN BASE
19 COMPANY SALES INCOME.—For purposes of this
20 section, the term ‘foreign base company sales
21 income’ shall not include any imported property
22 income.”.

23 (c) SEPARATE APPLICATION OF LIMITATIONS ON
24 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
25 COME.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 904(d) of the Internal Revenue Code of 1986 is
3 amended by striking “and” at the end of subpara-
4 graph (A), by redesignating subparagraph (B) as
5 subparagraph (C), and by inserting after subpara-
6 graph (A) the following new subparagraph:

7 “(B) imported property income, and”.

8 (2) IMPORTED PROPERTY INCOME DEFINED.—
9 Paragraph (2) of section 904(d) of such Code is
10 amended by redesignating subparagraphs (I), (J),
11 and (K) as subparagraphs (J), (K), and (L), respec-
12 tively, and by inserting after subparagraph (H) the
13 following new subparagraph:

14 “(I) IMPORTED PROPERTY INCOME.—The
15 term ‘imported property income’ means any in-
16 come received or accrued by any person which
17 is of a kind which would be imported property
18 income (as defined in section 954(j)).”.

19 (3) CONFORMING AMENDMENT.—Clause (ii) of
20 section 904(d)(2)(A) of such Code is amended by in-
21 serting “or imported property income” after “pas-
22 sive category income”.

23 (d) TECHNICAL AMENDMENTS.—

24 (1) Clause (iii) of section 952(c)(1)(B) of the
25 Internal Revenue Code of 1986 is amended—

1 (A) by redesignating subclauses (II), (III),
2 (IV), and (V) as subclauses (III), (IV), (V), and
3 (VI), and

4 (B) by inserting after subclause (I) the fol-
5 lowing new subclause:

6 “(II) imported property in-
7 come,”.

8 (2) The last sentence of paragraph (4) of sec-
9 tion 954(b) of such Code is amended by striking
10 “subsection (a)(5)” and inserting “subsection
11 (a)(4)”.

12 (3) Paragraph (5) of section 954(b) of such
13 Code is amended by striking “and the foreign base
14 company oil related income” and inserting “the for-
15 eign base company oil related income, and the im-
16 ported property income”.

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after the date of the enactment of this
20 Act, and to taxable years of United States shareholders
21 within which or with which such taxable years of such for-
22 eign corporations end.

1 **TITLE IV—ELIMINATION OF TAX**
 2 **LOOPHOLES FOR OIL AND**
 3 **GAS COMPANIES**

4 **SEC. 401. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
 5 **APPLICABLE TO MAJOR INTEGRATED OIL**
 6 **COMPANIES WHICH ARE DUAL CAPACITY**
 7 **TAXPAYERS.**

8 (a) IN GENERAL.—Section 901 of the Internal Rev-
 9 enue Code of 1986 is amended by redesignating subsection
 10 (n) as subsection (o) and by inserting after subsection (m)
 11 the following new subsection:

12 “(n) SPECIAL RULES RELATING TO MAJOR INTE-
 13 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
 14 TAXPAYERS.—

15 “(1) GENERAL RULE.—Notwithstanding any
 16 other provision of this chapter, any amount paid or
 17 accrued by a dual capacity taxpayer which is a
 18 major integrated oil company (as defined in section
 19 167(h)(5)(B)) to a foreign country or possession of
 20 the United States for any period shall not be consid-
 21 ered a tax—

22 “(A) if, for such period, the foreign coun-
 23 try or possession does not impose a generally
 24 applicable income tax, or

1 “(B) to the extent such amount exceeds
2 the amount (determined in accordance with reg-
3 ulations) which—

4 “(i) is paid by such dual capacity tax-
5 payer pursuant to the generally applicable
6 income tax imposed by the country or pos-
7 session, or

8 “(ii) would be paid if the generally ap-
9 plicable income tax imposed by the country
10 or possession were applicable to such dual
11 capacity taxpayer.

12 Nothing in this paragraph shall be construed to
13 imply the proper treatment of any such amount not
14 in excess of the amount determined under subpara-
15 graph (B).

16 “(2) DUAL CAPACITY TAXPAYER.—For pur-
17 poses of this subsection, the term ‘dual capacity tax-
18 payer’ means, with respect to any foreign country or
19 possession of the United States, a person who—

20 “(A) is subject to a levy of such country or
21 possession, and

22 “(B) receives (or will receive) directly or
23 indirectly a specific economic benefit (as deter-
24 mined in accordance with regulations) from
25 such country or possession.

1 “(3) GENERALLY APPLICABLE INCOME TAX.—

2 For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘generally
4 applicable income tax’ means an income tax (or
5 a series of income taxes) which is generally im-
6 posed under the laws of a foreign country or
7 possession on income derived from the conduct
8 of a trade or business within such country or
9 possession.

10 “(B) EXCEPTIONS.—Such term shall not
11 include a tax unless it has substantial applica-
12 tion, by its terms and in practice, to—

13 “(i) persons who are not dual capacity
14 taxpayers, and

15 “(ii) persons who are citizens or resi-
16 dents of the foreign country or posses-
17 sion.”.

18 (b) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
20 this section shall apply to taxes paid or accrued in
21 taxable years beginning after the date of the enact-
22 ment of this Act.

23 (2) CONTRARY TREATY OBLIGATIONS
24 UPHELD.—The amendments made by this section

1 shall not apply to the extent contrary to any treaty
2 obligation of the United States.

3 **SEC. 402. LIMITATION ON SECTION 199 DEDUCTION ATTRIB-**
4 **UTABLE TO OIL, NATURAL GAS, OR PRIMARY**
5 **PRODUCTS THEREOF.**

6 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
7 tion 199(c) of the Internal Revenue Code of 1986 is
8 amended by adding at the end the following new subpara-
9 graph:

10 “(E) SPECIAL RULE FOR CERTAIN OIL
11 AND GAS INCOME.—In the case of any taxpayer
12 who is a major integrated oil company (as de-
13 fined in section 167(h)(5)(B)) for the taxable
14 year, the term ‘domestic production gross re-
15 ceipts’ shall not include gross receipts from the
16 production, transportation, or distribution of
17 oil, natural gas, or any primary product (within
18 the meaning of subsection (d)(9)) thereof.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2012.

22 **SEC. 403. LIMITATION ON DEDUCTION FOR INTANGIBLE**
23 **DRILLING AND DEVELOPMENT COSTS.**

24 (a) IN GENERAL.—Section 263(c) of the Internal
25 Revenue Code of 1986 is amended by adding at the end

1 the following new sentence: “This subsection shall not
 2 apply to amounts paid or incurred by a taxpayer in any
 3 taxable year in which such taxpayer is a major integrated
 4 oil company (as defined in section 167(h)(5)(B)).”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to amounts paid or incurred in tax-
 7 able years beginning after December 31, 2012.

8 **SEC. 404. LIMITATION ON PERCENTAGE DEPLETION AL-**
 9 **LOWANCE FOR OIL AND GAS WELLS.**

10 (a) IN GENERAL.—Section 613A of the Internal Rev-
 11 enue Code of 1986 is amended by adding at the end the
 12 following new subsection:

13 “(f) APPLICATION WITH RESPECT TO MAJOR INTE-
 14 GRATED OIL COMPANIES.—In the case of any taxable year
 15 in which the taxpayer is a major integrated oil company
 16 (as defined in section 167(h)(5)(B)), the allowance for
 17 percentage depletion shall be zero.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2012.

21 **SEC. 405. LIMITATION ON DEDUCTION FOR TERTIARY**
 22 **INJECTANTS.**

23 (a) IN GENERAL.—Section 193 of the Internal Rev-
 24 enue Code of 1986 is amended by adding at the end the
 25 following new subsection:

1 “(d) APPLICATION WITH RESPECT TO MAJOR INTE-
2 GRATED OIL COMPANIES.—This section shall not apply to
3 amounts paid or incurred by a taxpayer in any taxable
4 year in which such taxpayer is a major integrated oil com-
5 pany (as defined in section 167(h)(5)(B)).”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to amounts paid or incurred in tax-
8 able years beginning after December 31, 2012.

9 **SEC. 406. REPEAL OF OUTER CONTINENTAL SHELF DEEP**
10 **WATER AND DEEP GAS ROYALTY RELIEF.**

11 (a) IN GENERAL.—Sections 344 and 345 of the En-
12 ergy Policy Act of 2005 (42 U.S.C. 15904, 15905) are
13 repealed.

14 (b) ADMINISTRATION.—The Secretary of the Interior
15 shall not be required to provide for royalty relief in the
16 lease sale terms beginning with the first lease sale held
17 on or after the date of enactment of this Act for which
18 a final notice of sale has not been published.

○