Public Law 95-618
95th Congress

An Act

Nov. 9, 1978
[H.R. 5263]

To provide tax incentives for the production and conservation of energy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) item 912.05 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

Energy Tax Act of 1978
Bicycle parts, duty suspension.
19 USC 1202 app.

(1) by inserting ", and parts thereof" immediately after "Generator lighting sets for bicycles"; and

(2) by striking out "12/31/76" and inserting in lieu thereof "6/30/80".

26 USC 1 note.

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Energy Tax Act of 1978".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

26 USC 1.

(c) TABLE OF CONTENTS.—

TITLE IV—MISCELLANEOUS PROVISIONS

TITLE I—RESIDENTIAL ENERGY CREDIT

SEC. 101. RESIDENTIAL ENERGY CREDIT.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by inserting after section 44B the following new section:

"SEC. 44C. RESIDENTIAL ENERGY CREDIT. 26 USC 44C.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the qualified energy conservation expenditures, plus

"(2) the qualified renewable energy source expenditures.

"(b) QUALIFIED EXPENDITURES.—For purposes of subsection (a)—

"(1) ENERGY CONSERVATION.—In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

"(2) RENEWABLE ENERGY SOURCE.—In the case of any dwelling unit, the qualified renewable energy source expenditures are the following percentages of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit:

"(A) 30 percent of so much of such expenditures as does not exceed $2,000, plus

"(B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000.

"(3) PRIOR EXPENDITURES BY TAXPAYER ON SAME RESIDENCE TAKEN INTO ACCOUNT.—If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

"(4) MINIMUM DOLLAR AMOUNT.—No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowed with respect to such return is less than $10.

"(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43. 26 USC 31, 39, 43.

"(6) CARRYOVER OF UNUSED CREDIT.—

"(A) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by paragraph (5) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(B) NO CARRYOVER TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1987.—No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ENERGY CONSERVATION EXPENDITURES.—The term 'energy conservation expenditure' means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

"(A) which is located in the United States,

"(B) which is used by the taxpayer as his principal residence, and

"(C) the construction of which was substantially completed before April 20, 1977.

"(2) RENEWABLE ENERGY SOURCE EXPENDITURE.—

"(A) IN GENERAL.—The term 'renewable energy source expenditure' means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source property installed in connection with a dwelling unit—

"(i) which is located in the United States, and

"(ii) which is used by the taxpayer as his principal residence.

"(B) CERTAIN LABOR COSTS INCLUDED.—The term 'renewable energy source expenditure' includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property.

"(C) SWIMMING POOL, ETC., USED AS STORAGE MEDIUM.—The term 'renewable energy source expenditure' does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a primary function other than the function of such storage.

"(3) INSULATION.—The term 'insulation' means any item—

"(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the item.

"(4) OTHER ENERGY-CONSERVING COMPONENT.—The term 'other energy-conserving component' means any item (other than insulation)—

"(A) which is—

"(i) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

"(iii) an electrical or mechanical furnace ignition system, which replaces a gas pilot light,

"(iv) a storm or thermal window or door for the exterior of the dwelling,

"(v) an automatic energy-saving setback thermostat,

"(vi) caulking or weatherstripping of an exterior door or window,

"(vii) a meter which displays the cost of energy usage, or

"(viii) an item of the kind which the Secretary specifies by regulations as increasing the energy efficiency of the dwelling,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the item.

"(5) RENEWABLE ENERGY SOURCE PROPERTY.—The term 'renewable energy source property' means property—

"(A) which, when installed in connection with a dwelling, transmits or uses—

"(i) solar energy, energy derived from the geothermal deposits (as defined in section 613(e)(3)), or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or

Post, p. 3203.

"(ii) wind energy for nonbusiness residential purposes,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 5 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the property.

"(6) REGULATIONS.—

"(A) CRITERIA; CERTIFICATION PROCEDURES.—The Secretary shall by regulations—

"(i) establish the criteria which are to be used in (I) prescribing performance and quality standards under paragraphs (3), (4), and (5), or (II) specifying any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i), and

"(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this section, as insulation, an energy-conserving component, or renewable energy source property.

"(B) CONSULTATION.—Performance and quality standards regulations and other regulations shall be prescribed by the Secretary under paragraphs (3), (4), and (5) and under this paragraph only after consultation with the Secretary of Energy, the Secretary of Housing and Urban Development, and other appropriate Federal officers.

"(7) WHEN EXPENDITURES MADE; AMOUNT OF EXPENDITURES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

"(B) RENEWABLE ENERGY SOURCE EXPENDITURES.—In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

"(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

"(D) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of this subparagraph, use for a swimming pool shall be treated as use which is not for residential purposes.

"(8) PRINCIPAL RESIDENCE.—The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

26 USC 1034.

"(A) no ownership requirement shall be imposed, and

"(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

"(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

"(B) there shall be allowable with respect to such expenditures to each of such individuals a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to

the aggregate of such expenditures made by all of such individuals during such calendar year.

"(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation. 26 USC 216.

"(3) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences. 26 USC 528.

"(4) 1977 EXPENDITURES ALLOWED FOR 1978.—

"(A) NO CREDIT FOR TAXABLE YEARS BEGINNING BEFORE 1978.—No credit shall be allowed under this section for any taxable year beginning before January 1, 1978.

"(B) 1977 EXPENDITURES ALLOWED FOR 1978.—In the case of the taxpayer's first taxable year beginning after December 31, 1977, this section shall be applied by taking into account the period beginning April 20, 1977, and ending on the last day of such first taxable year.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—This section shall not apply to expenditures made after December 31, 1985."

(b) TECHNICAL AND CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 44B the following new item:

"Sec. 44C. Residential energy credit."

(2) Subsection (c) of section 56 (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, and 43." 26 USC 56. 26 USC 31, 39, 43.

(3) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by inserting after paragraph (20) the following new paragraph: 26 USC 1016.

"(21) to the extent provided in section 44C(e), in the case of property with respect to which a credit has been allowed under section 44C;". *Ante*, p. 3175.

26 USC 6096.

(4) Subsection (b) of section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

26 USC 44C note.

(c) EFFECTIVE DATE.— The amendments made by this section shall apply to taxable years ending on or after April 20, 1977.

TITLE II—TRANSPORTATION

PART I—GAS GUZZLER TAX

SEC. 201. GAS GUZZLER TAX.

(a) GENERAL RULE.—Part I of subchapter A of chapter 32 (relating to motor vehicle excise taxes) is amended by adding at the end thereof the following new section:

26 USC 4064.

"SEC. 4064. GAS GUZZLER TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following tables:

"(1) In the case of a 1980 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 15	0
At least 14 but less than 15	$200
At least 13 but less than 14	300
Less than 13	550

"(2) In the case of a 1981 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 17	0
At least 16 but less than 17	$200
At least 15 but less than 16	350
At least 14 but less than 15	450
At least 13 but less than 14	550
Less than 13	650

"(3) In the case of a 1982 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 18.5	0
At least 17.5 but less than 18.5	$200
At least 16.5 but less than 17.5	350
At least 15.5 but less than 16.5	450
At least 14.5 but less than 15.5	600
At least 13.5 but less than 14.5	750
At least 12.5 but less than 13.5	950
Less than 12.5	1,200

"(4) In the case of a 1983 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19	0
At least 18 but less than 19	$350
At least 17 but less than 18	500
At least 16 but less than 17	650
At least 15 but less than 16	800
At least 14 but less than 15	1,000
At least 13 but less than 14	1,250
Less than 13	1,550

"(5) In the case of a 1984 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19.5	0
At least 18.5 but less than 19.5	$450
At least 17.5 but less than 18.5	600
At least 16.5 but less than 17.5	750
At least 15.5 but less than 16.5	950
At least 14.5 but less than 15.5	1,150
At least 13.5 but less than 14.5	1,450
At least 12.5 but less than 13.5	1,750
Less than 12.5	2,150

"(6) In the case of a 1985 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 21	0
At least 20 but less than 21	$500
At least 19 but less than 20	600
At least 18 but less than 19	800
At least 17 but less than 18	1,000
At least 16 but less than 17	1,200
At least 15 but less than 16	1,500
At least 14 but less than 15	1,800
At least 13 but less than 14	2,200
Less than 13	2,650

"(7) In the case of a 1986 or later model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 22.5	0
At least 21.5 but less than 22.5	$500
At least 20.5 but less than 21.5	650
At least 19.5 but less than 20.5	850
At least 18.5 but less than 19.5	1,050
At least 17.5 but less than 18.5	1,300
At least 16.5 but less than 17.5	1,500
At least 15.5 but less than 16.5	1,850
At least 14.5 but less than 15.5	2,250
At least 13.5 but less than 14.5	2,700
At least 12.5 but less than 13.5	3,200
Less than 12.5	3,850

"(b) DEFINITIONS.—For purposes of this section—

"(1) AUTOMOBILE.—

"(A) IN GENERAL.—The term 'automobile' means any 4-wheeled vehicle propelled by fuel—

"(i) which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

"(ii) which is rated at 6,000 pounds gross vehicle weight or less.

"(B) EXCEPTION FOR CERTAIN VEHICLES.—The term 'automobile' does not include any vehicle which is treated as a nonpassenger automobile under the rules which were prescribed by the Secretary of Transportation for purposes of section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) and which were in effect on the date of the enactment of this section.

"(C) EXCEPTION FOR EMERGENCY VEHICLES.—The term 'automobile' does not include any vehicle sold for use and used—

"(i) as an ambulance or combination ambulance-hearse,

"(ii) by the United States or by a State or local government for police or other law enforcement purposes, or

"(iii) for other emergency uses prescribed by the Secretary by regulations.

"(2) FUEL ECONOMY.—The term 'fuel economy' means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under subsection (c).

"(3) MODEL TYPE.—The term 'model type' means a particular class of automobile as determined by regulation by the EPA Administrator.

"(4) MODEL YEAR.—The term 'model year', with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term 'model year' means the calendar year.

"(5) MANUFACTURER.—The term 'manufacturer' includes a producer or importer.

"(6) EPA ADMINISTRATOR.—The term 'EPA Administrator' means the Administrator of the Environmental Protection Agency.

"(7) FUEL.—The term 'fuel' means gasoline and diesel fuel. The Secretary (after consultation with the Secretary of Transportation) may, by regulation, include any product of petroleum or natural gas within the meaning of such term if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

"(c) DETERMINATION OF FUEL ECONOMY.—For purposes of this section—

"(1) IN GENERAL.—Fuel economy for any model type shall be measured in accordance with testing and calculation procedures established by the EPA Administrator by regulation. Procedures so established shall be the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy to the Secretary.

42 USC 7540.

"(2) SPECIAL RULE FOR FUELS OTHER THAN GASOLINE.—The EPA Administrator shall by regulation determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

"(3) TIME BY WHICH REGULATIONS MUST BE ISSUED.—Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months before the model year to which such procedures apply.

"(d) SPECIAL RULES FOR SMALL MANUFACTURERS.—

"(1) IN GENERAL.—If, on the application of a small manufacturer, the Secretary determines that it is not feasible for such manufacturer to meet the tax-free fuel economy level for the model year with respect to all automobiles produced by such manufacturer or with respect to a model type produced by such manufacturer, the Secretary may by regulation prescribe an alternate rate schedule for such model year for all automobiles produced by such manufacturer or for such model type, as the

case may be. The alternate rate schedule shall be based on the maximum feasible fuel economy level which such manufacturer can meet for such model year with respect to all automobiles or with respect to such model type, as the case may be.

"(2) APPLICATION TO INCLUDE NECESSARY INFORMATION.—An application under this subsection for any model year shall contain such information as the Secretary may by regulations prescribe.

"(3) DETERMINATIONS TO BE MADE ONLY AFTER CONSULTATION.—Determinations under paragraph (1) shall be made by the Secretary only after consultation with the Secretary of Energy, the Secretary of Transportation, and other appropriate Federal officers.

"(4) SMALL MANUFACTURER DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'small manufacturer' means any manufacturer—

"(i) who manufactured (whether or not in the United States) fewer than 10,000 automobiles in the second model year preceding the model year for which the determination under paragraph (1) is being made, and

"(ii) who can reasonably be expected to manufacture (whether or not in the United States) fewer than 10,000 automobiles in the model year for which the determination under paragraph (1) is being made.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) MANUFACTURER OF AUTOMOBILES PRODUCED ABROAD DETERMINED WITHOUT REGARD TO IMPORTATION.—The meaning of the term 'manufacturer' shall be determined without regard to subsection (b)(5).

"(ii) CONTROLLED GROUPS.—Persons who are members of the same controlled group of corporations shall be treated as one manufacturer. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a); except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)." 26 USC 1563.

(b) REDUCTION IN BASIS OF AUTOMOBILE ON WHICH GAS GUZZLER TAX WAS IMPOSED.—Section 1016 (relating to adjustments to basis) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection: 26 USC 1016.

"(d) REDUCTION IN BASIS OF AUTOMOBILE ON WHICH GAS GUZZLER TAX WAS IMPOSED.—If—

"(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and *Ante*, p. 3180.

"(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence."

(c) DENIAL OF CERTAIN EXEMPTIONS AND REFUNDS.—

(1) TAX-FREE SALES.—Subsection (a) of section 4221 (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: 26 USC 4221.

"Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064."

Ante, p. 3180.

26 USC 4293.

(2) UNITED STATES AND POSSESSIONS.—Section 4293 (relating to exemption for United States and possessions) is amended by striking out "tax imposed by section 4121" and inserting in lieu thereof "taxes imposed by sections 4064 and 4121".

26 USC 6416.

(3) DENIAL OF REFUNDS FOR CERTAIN USES.—Paragraph (2) of section 6416(b) (relating to tax payments considered overpayments in the case of specified uses and resales) is amended by adding at the end thereof the following new sentence:

"Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064".

26 USC 4217.

(d) PAYMENT OF TAX IN CASE OF LEASED AUTOMOBILES.—Section 4217 (relating to leases) is amended by adding at the end thereof the following new subsection:

"(e) LEASES OF AUTOMOBILES SUBJECT TO GAS GUZZLER TAX.—

(1) IN GENERAL.—In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply, but, for purposes of this chapter—

"(A) the first lease of such automobile by the manufacturer shall be considered to be a sale, and

"(B) any lease of such automobile by the manufacturer after the first lease of such automobile shall not be considered to be a sale.

"(2) PAYMENT OF TAX.—In the case of a lease described in paragraph (1)(A)—

"(A) there shall be paid by the manufacturer on each lease payment that portion of the total gas guzzler tax which bears the same ratio to such total gas guzzler tax as such payment bears to the total amount to be paid under such lease,

"(B) if such lease is canceled, or the automobile is sold or otherwise disposed of, before the total gas guzzler tax is payable, there shall be paid by the manufacturer on such cancellation, sale, or disposition the difference between the tax imposed under subparagraph (A) on the lease payments and the total gas guzzler tax, and

"(C) if the automobile is sold or otherwise disposed of after the total gas guzzler tax is payable, no tax shall be imposed under section 4064 on such sale or disposition.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) MANUFACTURER.—The term 'manufacturer' includes a producer or importer.

"(B) TOTAL GAS GUZZLER TAX.—The term 'total gas guzzler tax' means the tax imposed by section 4064, computed at the rate in effect on the date of the first lease."

Ante, p. 3180.

26 USC 4222.

(e) AUTHORITY TO EXTEND REGISTRATION SYSTEM TO EXEMPTION OF EMERGENCY VEHICLES.—Subsection (d) of section 4222 (relating to registration in the case of certain other exemptions) is amended by inserting "4064(b)(1)(C)," after "4063(b),".

(f) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4064. Gas guzzler tax."

26 USC 4064 note.

26 USC 4064.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to 1980 and later model year automobiles (as defined in section 4064(b) of the Internal Revenue Code of 1954).

PART II—MOTOR FUELS

SEC. 221. EXEMPTION FROM MOTOR FUELS EXCISE TAXES FOR CERTAIN ALCOHOL FUELS.

(a) GASOLINE MIXED WITH ALCOHOL.—

(1) IN GENERAL.—Section 4081 (relating to imposition of tax on gasoline) is amended by adding at the end thereof the following new subsection: 26 USC 4081.

"(c) GASOLINE MIXED WITH ALCOHOL.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed by this section on the sale of any gasoline—

"(A) in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or

"(B) for use in producing a mixture at least 10 percent of which is alcohol.

"(2) LATER SEPARATION OF GASOLINE.—If any person separates the gasoline from a mixture of gasoline and alcohol on which tax was not imposed by reason of this subsection, such person shall be treated as the producer of such gasoline.

"(3) ALCOHOL DEFINED.—For purposes of this subsection, the term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales after December 31, 1978, and before October 1, 1984. 26 USC 4081 note.

(b) ALCOHOL MIXED WITH SPECIAL FUEL.—

(1) IN GENERAL.—Section 4041 (relating to imposition of tax on special fuels) is amended by adding at the end thereof the following new subsection: 26 USC 4041.

"(k) FUELS CONTAINING ALCOHOL.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed by this section on the sale or use of any liquid fuel at least 10 percent of which consists of alcohol (as defined by section 4081(c)(3)).

"(2) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol on which tax was not imposed by reason of this subsection, such separation shall be treated as a sale of the liquid fuel."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or use after December 31, 1978, and before October 1, 1984. 26 USC 4041 note.

(c) REPORTS.— 26 USC 4041 note.

(1) ANNUAL REPORT.—On April 1 of each year, beginning with April 1, 1980, and ending on April 1, 1984, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include— Report to Congress.

(A) a description of the firms engaged in the alcohol fuel industry,

(B) the amount of alcohol fuels sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels,

(C) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1954, and 26 USC 4041, 4081.

(D) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels before the imposition of any Federal excise taxes.

Report to Congress.

(2) REPORT.—The report submitted to the Congress on April 1, 1984, shall contain, in addition to the information required under paragraph (1), an analysis of the effect on the alcohol fuel industry of the termination of the exemption from excise taxes provided under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1954.

26 USC 4041, 4081.

(d) EXPEDITION OF CERTAIN ETHANOL PRODUCTION APPLICATIONS.—The Secretary of the Treasury shall expedite, to the maximum extent possible, action on the application of any person with respect to the production of ethanol for use in producing gasoline described in section 4081(c) (or in producing liquid fuel described in section 4041(k)) of the Internal Revenue Code of 1954. Within 6 months after the date of the enactment of this Act, the Secretary shall furnish to the Committee on Finance, United States Senate, and to the Committee on Ways and Means, United States House of Representatives, recommendations for legislation necessary to provide for changes in the provisions of chapter 51 of the Internal Revenue Code of 1954 to provide a simple, expeditious procedure for processing such applications and to simplify the regulation of such persons for purposes of such chapter consistent with adequate safeguards against the use of such applications to avoid or evade compliance with the provisions of such chapter relating to distilled spirits procured, dealt in, or used for other purposes.

26 USC 4081 note.

Legislative recommendations to congressional committees.

26 USC 5001 *et seq.*

SEC. 222. DENIAL OF CREDIT OR REFUND FOR NONBUSINESS NONHIGHWAY USE OF GASOLINE, SPECIAL MOTOR FUELS, AND LUBRICATING OIL.

(a) IN GENERAL.—

(1) GASOLINE.—

26 USC 6421.

(A) So much of the first sentence of section 6421(a) (relating to nonhighway uses) as precedes "the Secretary" is amended to read as follows: "Except as provided in subsection (i), if gasoline is used in a qualified business use,".

(B) Subsection (d) of section 6421 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(3) QUALIFIED BUSINESS USE.—

"(A) IN GENERAL.—The term 'qualified business use' means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

26 USC 212.

"(i) which (at the time of such use), is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

"(ii) which, in the case of a highway vehicle owned by the United States, is used on the highway.

"(B) EXCEPTION FOR USE IN MOTORBOATS.—The term 'qualified business use' does not include any use in a motorboat.

"(C) COMMERCIAL FISHING VESSELS.—For provisions exempting from tax gasoline, special motor fuels, and lubricating oil used for commercial fishing vessels, see—

26 USC 4221.

"(i) subsections (a)(3) and (d)(3) of section 4221 (relating to certain tax-free sales),

"(ii) section 6416(b)(2)(B) (relating to refund or credit in case of certain uses), and 26 USC 6416.

"(iii) section 4041(g)(1) (relating to exemptions from tax on special fuels)." 26 USC 4041.

(2) SPECIAL MOTOR FUELS.—Subsection (b) of section 4041 (relating to special motor fuels) is amended by striking out the second and third sentences and inserting in lieu thereof the following:

"In the case of a liquid taxable under this subsection sold for use, or used, in a qualified business use, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used otherwise than in a qualified business use, a tax of 2 cents a gallon shall be imposed under paragraph (2). For purposes of this subsection, the term 'qualified business use' has the meaning given to such term by section 6421(d)(3)." 26 USC 6421.

(3) LUBRICATING OIL.—Subsection (a) of section 6424 (relating to lubricating oil not used in highway motor vehicles) is amended by striking out "is used otherwise than in a highway motor vehicle" and inserting in lieu thereof "is used in a qualified business use (within the meaning of section 6421(d)(3))". 26 USC 6424.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to uses after December 31, 1978. 26 USC 4041 note.

PART III—PROVISIONS RELATED TO BUSES

SEC. 231. REMOVAL OF EXCISE TAX ON BUSES.

(a) GENERAL RULE.—Paragraph (6) of section 4063(a) (relating to exemption for local transit buses) is amended to read as follows: 26 USC 4063.

"(6) BUSES.—The tax imposed under section 4061(a) shall not apply in the case of any automobile bus chassis or automobile bus body." 26 USC 4061.

(b) FLOOR STOCKS REFUNDS.— 26 USC 4063 note.

(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act, any tax-repealed article (as defined in subsection (e)) has been sold by the manufacturer, producer, or importer and on such day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

(A) claim for such credit or refund is filed with the Secretary of the Treasury before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon a request submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refunds is claimed; and

(B) on or before the first day of such 10th calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such

evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury under this subsection.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

26 USC 4061.

(c) REFUNDS WITH RESPECT TO CERTAIN CONSUMER PURCHASES.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (2), where on or after April 20, 1977, and on or before the date of the enactment of this Act, a tax-repealed article (as defined in subsection (e)) has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless—

(A) he has in his possession such evidence of the sale of the article to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulations prescribed by the Secretary of the Treasury under this subsection;

(B) claim for such credit or refund is filed with the Secretary of the Treasury before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon information submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the person who sold the article (in respect of which the credit or refund is claimed) to the ultimate purchaser; and

(C) on or before the first day of such 10th calendar month reimbursement has been made to the ultimate purchaser in an amount equal to the tax paid on the article.

(3) OTHER LAWS APPLICABLE.—All provisions of laws, including penalties, applicable with respect to the taxes imposed by section 4061(a) of such Code shall, insofar as applicable and not inconsistent with paragraph (1) or (2) of this subsection, apply with respect to the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayment of the tax.

(d) CERTAIN USES BY MANUFACTURER, ETC.—Any tax paid by reason of section 4218(a) of such Code (relating to use by manufacturer or importer considered sale) on any tax-repealed article shall be deemed an overpayment of such tax if the tax was imposed on such article by reason of such section 4218(a) on or after April 20, 1977.

26 USC 4218.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made) and if, for purposes of consumption, title to

such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) The term "tax-repealed article" means an article on which a tax was imposed by section 4061(a) of such Code (as in effect on the day before the date of the enactment of this Act) and which is exempted from such tax by paragraph (6) of section 4063(a) of such Code (as amended by subsection (a) of this section). 26 USC 4061. 26 USC 4063.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The heading for paragraph (1) of section 6412(a) (relating to floor stocks refunds) is amended by striking out "AND BUSES". 26 USC 6412.

(2) Subsection (d) of section 4222 (relating to registration in case of certain other exemptions) is amended by striking out "4063(a) (6) or (7)" and inserting in lieu thereof "4063(a)(7)". 26 USC 4222.

(g) EFFECTIVE DATE.— 26 USC 4063 note.

(1) The amendments made by subsections (a) and (f) shall apply with respect to articles sold after the date of the enactment of this Act.

(2) For purposes of paragraph (1), an article shall not be considered sold on or before the date of the enactment of this Act unless possession or right to possession passes to the purchaser on or before such date.

(3) In the case of—

(A) a lease,

(B) a contract for the sale of an article providing that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(C) a conditional sale, or

(D) a chattel mortgage arrangement providing that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act, payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before the date of the enactment of this Act.

SEC. 232. REMOVAL OF EXCISE TAX ON BUS PARTS.

(a) EXEMPT SALES.—Subsection (e) of section 4221 (relating to special rules for certain tax-free sales) is amended by adding at the end thereof the following new paragraph: 26 USC 4221.

"(6) BUS PARTS AND ACCESSORIES.—Under regulations prescribed by the Secretary, the tax imposed by section 4061(b) shall not apply to any part or accessory which is sold for use by the purchaser on or in connection with an automobile bus."

(b) REFUND FOR CERTAIN SALES OF BUS PARTS.—Subparagraph (I) of section 6416(b)(2) (relating to refund for specified uses and resales) is amended to read as follows: 26 USC 6416.

"(I) in the case of any article taxable under section 4061(b), sold for use by the purchaser on or in connection with an automobile bus;".

26 USC 4221 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act.

SEC. 233. REMOVAL OF EXCISE TAX ON FUEL, OIL, AND TIRES USED IN CONNECTION WITH INTERCITY, LOCAL, AND SCHOOL BUSES.

(a) REPAYMENT OF TAX ON GASOLINE AND OTHER MOTOR FUELS USED BY INTERCITY, LOCAL, OR SCHOOL BUSES.—

26 USC 6421.

(1) GASOLINE.—Subsection (b) of section 6421 (relating to local transit systems) is amended to read as follows:

"(b) INTERCITY, LOCAL, OR SCHOOL BUSES.—

"(1) ALLOWANCE.—Except as provided in paragraph (2) and subsection (i), if gasoline is used in an automobile bus while engaged in—

"(A) furnishing (for compensation) passenger land transportation available to the general public, or

"(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

26 USC 4221.

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on such gasoline by section 4081.

26 USC 4081.

"(2) LIMITATION IN CASE OF NONSCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of gasoline used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver)."

26 USC 6427.

(2) OTHER FUELS.—Subsection (b) of section 6427 (relating to local transit systems) is amended to read as follows:

"(b) INTERCITY, LOCAL, OR SCHOOL BUSES.—

"(1) ALLOWANCE.—Except as provided in paragraph (2) and subsection (g), if any fuel on the sale of which tax was imposed by subsection (a) or (b) of section 4041 is used in an automobile bus while engaged in—

26 USC 4041.

"(A) furnishing (for compensation) passenger land transportation available to the general public, or

"(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by subsection (a) or (b) of section 4041.

"(2) LIMITATION IN CASE OF NONSCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver)."

(3) TECHNICAL AMENDMENTS.—

26 USC 6421.

(A) Subsection (d) of section 6421 is amended—

(i) by striking out paragraph (2), and

(ii) by redesignating paragraph (3) (as added by section 222(a)(1)(B)) as paragraph (2).

Ante, p. 3186.

(B) The last sentence of section 4041(b) (as added by section 222(a)(2)) is amended by striking out "6421(d)(3)" and inserting in lieu thereof "6421(d)(2)". 26 USC 4041.

(C) Subsection (c) of section 4483 is amended by inserting "(as in effect on the day before the date of the enactment of the Energy Tax Act of 1978)" after "section 6421(b)(2)". 26 USC 4483.

(b) REPAYMENT OF TAX ON LUBRICATING OIL USED IN INTERCITY, LOCAL, OR SCHOOL BUSES.—

(1) IN GENERAL.—Subsection (a) of section 6424 (relating to lubricating oil not used in highway motor vehicles) is amended to read as follows: 26 USC 6424.

"(a) PAYMENTS.—Except as provided in subsection (f), if lubricating oil (other than cutting oils, as defined in section 4092(b), and other than oil which has previously been used) is used— 26 USC 4092.

(1) in a qualified business use (as defined in section 6421(d)(2)), or 26 USC 6421.

"(2) in a qualified bus (as defined in section 4221(d)(7)), 26 USC 4221.

the Secretary shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used."

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The section heading for section 6424 is amended by striking out **"NOT USED IN HIGHWAY MOTOR VEHICLES"** and inserting in lieu thereof **"USED FOR CERTAIN NONTAXABLE PURPOSES".** 26 USC 6424.

(B) The table of sections for subchapter B of chapter 65 (relating to rules of special application) is amended by striking out "not used in highway motor vehicles" in the item relating to section 6424 and inserting in lieu thereof "used for certain nontaxable purposes". 26 USC 6411.

(C) Paragraph (3) of section 39(a) (relating to certain uses of gasoline, special fuels, and lubricating oil) is amended by striking out "otherwise than in a highway motor vehicle" and inserting in lieu thereof "for certain nontaxable purposes". 26 USC 39.

(D) Sections 6504(9) and 6675(a) are each amended by striking out "not used in highway motor vehicles" and inserting in lieu thereof "used for certain nontaxable purposes". 26 USC 6504, 6675.

(E) Paragraph (3) of section 209(f) of the Highway Revenue Act of 1956 is amended by striking out "lubricating oil not used in highway motor vehicles" and inserting in lieu thereof "lubricating oil used for certain nontaxable purposes". 23 USC 120 note.

(c) TIRES, TUBES, AND TREAD RUBBER.—

(1) IN GENERAL.—Paragraph (5) of section 4221(e) (relating to school buses) is amended to read as follows: 26 USC 4221.

"(5) TIRES, TUBES, AND TREAD RUBBER USED ON INTERCITY, LOCAL, AND SCHOOL BUSES.—Under regulations prescribed by the Secretary—

"(A) the taxes imposed by paragraphs (1) and (3) of section 4071(a) shall not apply in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus, and 26 USC 4071.

"(B) the tax imposed by paragraph (4) of section 4071(a) shall not apply in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to

be used by the purchaser on or in connection with a qualified bus."

26 USC 4221. (2) QUALIFIED BUS DEFINED.—Subsection (d) of section 4221 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(7) QUALIFIED BUS.—

"(A) IN GENERAL.—The term 'qualified bus' means—

"(i) an intercity or local bus, and

"(ii) a school bus.

"(B) INTERCITY OR LOCAL BUS.—The term 'intercity or local bus' means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

"(i) such transportation is scheduled and along regular routes, or

"(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

"(C) SCHOOL BUS.—The term 'school bus' means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term 'school' means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on."

26 USC 6416. (3) TECHNICAL AMENDMENT.—Paragraph (2) of section 6416 (b) (relating to specified uses and resales) is amended by striking out the period at the end of subparagraph (K) and inserting in lieu thereof a semicolon and by inserting after subparagraph (K) the following new subparagraphs:

"(L) in the case of any tire or inner tube taxable under 26 USC 4071. paragraph (1) or (3) of section 4071(a), sold to any person for use as described in section 4221(e)(5)(A); or

"(M) in the case of tread rubber taxable under paragraph (4) of section 4071(a), used in the recapping or retreading of a tire sold to any person for use on or in connection with a qualified bus (as defined in section 4221(d)(7))."

26 USC 39 note. (d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act.

PART IV—INCENTIVES FOR VAN POOLING

SEC. 241. FULL INVESTMENT CREDIT FOR CERTAIN COMMUTER VEHICLES.

26 USC 46. (a) IN GENERAL.—Subsection (c) of section 46 (relating to qualified investment) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR COMMUTER HIGHWAY VEHICLES.—

"(A) IN GENERAL.—Notwithstanding paragraph (2), in the case of a commuter highway vehicle the useful life of which is 3 years or more, the applicable percentage for purposes of paragraph (1) shall be 100 percent.

"(B) DEFINITION OF COMMUTER HIGHWAY VEHICLE.—For purposes of subparagraph (A), the term 'commuter highway vehicle' means a highway vehicle—

"(i) the seating capacity of which is at least 8 adults (not including the driver),

"(ii) at least 80 percent of the mileage use of which can reasonably be expected to be (I) for purposes of transporting the taxpayer's employees between their residences and their place of employment, and (II) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver),

"(iii) which is acquired by the taxpayer on or after the date of the enactment of the Energy Tax Act of 1978, and placed in service by the taxpayer before January 1, 1986, and

Ante, p. 3174.

"(iv) with respect to which the taxpayer makes an election under this paragraph on his return for the taxable year in which such vehicle is placed in service."

(b) AMENDMENTS OF THE RECAPTURE RULES.—

(1) Subsection (a) of section 47 (relating to recapture in case of certain dispositions, etc., of section 38 property) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

26 USC 47.

"(4) SPECIAL RULES FOR COMMUTER HIGHWAY VEHICLES.—

"(A) USEFUL LIFE.—For purposes of this subsection, 3 years shall be treated as the useful life which was taken into account in computing the credit under section 38 with respect to any commuter highway vehicle (as defined in section 46(c)(6)(B)).

26 USC 38.

Ante, p. 3192.

"(B) CHANGE IN USE.—If less than 80 percent of the mileage use of any commuter highway vehicle by the taxpayer during that portion of any taxable year which is within the first 36 months of the operation of such vehicle by the taxpayer meets the requirements of section 46(c)(6)(B), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating such vehicle, for purposes of determining qualified investment, as not being a commuter highway vehicle. If the application of this subparagraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1)."

(2) Paragraph (5) of section 47(a) (as redesignated by subparagraph (A)) is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (2) or (4)".

(3) Subparagraph (B) of section 47(a)(6) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (5)".

SEC. 242. EXCLUSION FROM GROSS INCOME OF VALUE OF QUALIFIED TRANSPORTATION PROVIDED BY EMPLOYER.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 124 as 125, and by inserting after section 123 the following new section:

26 USC 101.

26 USC 124, 125.

"SEC. 124. QUALIFIED TRANSPORTATION PROVIDED BY EMPLOYER.

26 USC 124.

"(a) GENERAL RULE.—Gross income of an employee does not include the value of qualified transportation provided by the employer between the employee's residence and place of employment.

"(b) QUALIFIED TRANSPORTATION.—For purposes of this section, the term 'qualified transportation' means transportation in a commuter highway vehicle (as defined in section 46(c)(6)(B) but without regard to clause (iii) or (iv) thereof).

Ante, p. 3192.

"(c) ADDITIONAL REQUIREMENTS.—Subsection (a) does not apply to the value of transportation provided by an employer unless—

"(1) such transportation is provided under a separate written plan of the employer which does not discriminate in favor of employees who are officers, shareholders, or highly compensated employees, and

"(2) the plan provides that the value of such transportation is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

"(d) DEFINITIONS.—For purposes of this section—

"(1) PROVIDED BY THE EMPLOYER.—Transportation shall be considered to be provided by an employer if the transportation is furnished in a commuter highway vehicle (described in subsection (b)) operated by or for the employer.

"(2) EMPLOYEE.—The term 'employee' does not include an individual who is an employee (within the meaning of section 401(c)(1)).

26 USC 401.

"(e) EFFECTIVE DATE.—Subsection (a) applies with respect to qualified transportation provided in taxable years beginning after December 31, 1978, and before January 1, 1986".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 124. Qualified transportation provided by employer.
"Sec. 125. Cross references to other Acts."

26 USC 124 note.

(c) TRANSITION RULE.—The plan requirements of section 124(c) of the Internal Revenue Code of 1954 shall be considered to be met with respect to transportation provided before July 1, 1979, if there is a plan meeting such requirements of the employer in effect on that date.

Supra.

TITLE III—CHANGES IN BUSINESS INVESTMENT CREDIT TO ENCOURAGE CONSERVATION OF, OR CONVERSION FROM, OIL AND GAS OR TO ENCOURAGE NEW ENERGY TECHNOLOGY

SEC. 301. CHANGES IN BUSINESS INVESTMENT CREDIT.

(a) AMOUNT OF CREDIT; ALLOWANCE OF ENERGY PERCENTAGE.—

26 USC 46.

(1) IN GENERAL.—Paragraph (2) of section 46(a) (relating to amount of credit for current taxable year) is amended to read as follows:

"(2) AMOUNT OF CREDIT.—

"(A) IN GENERAL.—The amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

"(i) the regular percentage,

"(ii) in the case of energy property, the energy percentage, and

"(iii) the ESOP percentage.

"(B) REGULAR PERCENTAGE.—For purposes of this paragraph, the regular percentage is—

"(i) 10 percent with respect to the period beginning on January 21, 1975, and ending on December 31, 1980, or

"(ii) 7 percent with respect to the period beginning on January 1, 1981.

"(C) ENERGY PERCENTAGE.—For purposes of this paragraph, the energy percentage is—

"(i) 10 percent with respect to the period beginning on October 1, 1978, and ending on December 31, 1982, or

"(ii) zero with respect to any other period.

"(D) SPECIAL RULE FOR CERTAIN ENERGY PROPERTY.—For purposes of this paragraph, the regular percentage shall not apply to any energy property which, but for section 48(l)(1), would not be section 38 property. *Infra.* 26 USC 38.

"(E) ESOP PERCENTAGE.—For purposes of this paragraph, the ESOP percentage is—

"(i) with respect to the period beginning on January 21, 1975, and ending on December 31, 1980, 1 percent, and

"(ii) with respect to the period beginning on January 1, 1977, and ending on December 31, 1980, an additional percentage (not in excess of ½ of 1 percent) which results in an amount equal to the amount determined under section 301(e) of the Tax Reduction Act of 1975. 26 USC 46 note.

This subparagraph shall apply to a corporation only if it meets the requirements of section 301(d) of the Tax Reduction Act of 1975 and only if it elects (at such time, in such form, and in such manner as the Secretary prescribes) to have this subparagraph apply." 26 USC 46 note.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 46(c)(3) (relating to public utility property) is amended to read as follows: 26 USC 46.

"(A) For the period beginning on January 1, 1981, in the case of any property which is public utility property, the amount of the qualified investment shall be 4/7 of the amount determined under paragraph (1). The preceding sentence shall not apply for purposes of applying the energy percentage."

(B) The first sentence of section 46(f)(8) (relating to prohibition of immediate flow through) is amended by striking out "and the Tax Reform Act of 1976" and inserting in lieu thereof ", the Tax Reform Act of 1976, and the Energy Tax Act of 1978". 26 USC 1 note. *Ante*, p. 3174.

(b) DEFINITIONS AND TRANSITIONAL RULES.—Section 48 (relating to definitions and special rules) is amended by redesignating subsection (l) as subsection (n) and by inserting after subsection (k) the following new subsections: 26 USC 48.

"(l) ENERGY PROPERTY.—For purposes of this subpart—

"(1) TREATMENT AS SECTION 38 PROPERTY.—For the period beginning on October 1, 1978, and ending on December 31, 1982—

"(A) any energy property shall be treated as meeting the requirements of paragraph (1) of subsection (a), and

"(B) paragraph (3) of subsection (a) shall not apply to any energy property.

"(2) ENERGY PROPERTY DEFINED.—The term 'energy property' means property—

"(A) which is—

"(i) alternative energy property,

"(ii) solar wind energy property,

"(iii) specially defined energy property,

"(iv) recycling equipment,

"(v) shale oil equipment, or

"(vi) equipment for producing natural gas from geopressured brine,

"(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer after September 30, 1978, or

"(ii) which is acquired after September 30, 1978, if the original use of such property commences with the taxpayer and commences after such date, and

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and which has a useful life (determined as of the time such property is placed in service) of 3 years or more.

"(3) ALTERNATIVE ENERGY PROPERTY.—

"(A) IN GENERAL.—The term 'alternative energy property' means—

"(i) a boiler the primary fuel for which will be an alternate substance,

"(ii) a burner (including necessary on-site equipment to bring the alternate substance to the burner) for a combustor other than a boiler if the primary fuel for such burner will be an alternate substance,

"(iii) equipment for converting an alternate substance into a synthetic liquid, gaseous, or solid fuel (other than coke or coke gas),

"(iv) equipment designed to modify existing equipment which uses oil or natural gas as a fuel or as feedstock so that such equipment will use either a substance other than oil and natural gas, or oil mixed with a substance other than oil and natural gas (where such other substance will provide not less than 25 percent of the fuel or feedstock),

"(v) equipment which uses coal (including lignite) as a feedstock for the manufacture of chemicals or other products (other than coke or coke gas),

"(vi) pollution control equipment required (by Federal, State, or local regulations) to be installed on or in connection with equipment described in clause (i), (ii), (iii), (iv), or (v),

"(vii) equipment used for the unloading, transfer, storage, reclaiming from storage, and preparation (including, but not limited to, washing, crushing, drying, and weighing) at the point of use of an alternate substance for use in equipment described in clause (i), (ii), (iii), (iv), (v), or (vi), and

"(viii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(3)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage.

Post, p. 3203.

"(B) EXCLUSION FOR PUBLIC UTILITY PROPERTY.—The terms 'alternative energy property', 'solar or wind energy property', and 'recycling equipment' do not include property which is public utility property (within the meaning of section 46(f)(5)).

26 USC 46.

"(C) ALTERNATE SUBSTANCE.—The term 'alternate substance' means any substance other than—

"(i) oil and natural gas, and

"(ii) any product of oil and natural gas.

"(D) SPECIAL RULE FOR CERTAIN POLLUTION CONTROL EQUIPMENT.—The term 'pollution control equipment' does not include any equipment which—

"(i) is installed on or in connection with property which, as of October 1, 1978, was using coal (including lignite), and

"(ii) was required to be installed by Federal, State, or local regulations in effect on such date.

"(4) SOLAR OR WIND ENERGY PROPERTY.—The term 'solar or wind energy property' means any equipment which uses solar or wind energy—

"(A) to generate electricity, or

"(B) to heat or cool (or provide hot water for use in) a structure.

"(5) SPECIALLY DEFINED ENERGY PROPERTY.—The term 'specially defined energy property' means—

"(A) a recuperator,

"(B) a heat wheel,

"(C) a regenerator,

"(D) a heat exchanger,

"(E) a waste heat boiler,

"(F) a heat pipe,

"(G) an automatic energy control system,

"(H) a turbulator,

"(I) a preheater,

"(J) a combustible gas recovery system,

"(K) an economizer, or

"(L) any other property of a kind specified by the Secretary by regulations,

the principal purpose of which is reducing the amount of energy consumed in any existing industrial or commercial process and which is installed in connection with an existing industrial or commercial facility.

"(6) RECYCLING EQUIPMENT.—

"(A) IN GENERAL.—The term 'recycling equipment' means any equipment which is used exclusively—

"(i) to sort and prepare solid waste for recycling, or

"(ii) in the recycling of solid waste.

"(B) CERTAIN EQUIPMENT NOT INCLUDED.—The term 'recycling equipment' does not include—

"(i) any equipment used in a process after the first marketable product is produced, or

"(ii) in the case of recycling iron or steel, any equipment used to reduce the waste to a molten state and in any process thereafter.

"(C) 10 PERCENT VIRGIN MATERIAL ALLOWED.—Any equipment used in the recycling of material which

includes some virgin materials shall not be treated as failing to meet the exclusive use requirements of subparagraph (A) if the amount of such virgin materials is 10 percent or less.

"(D) CERTAIN EQUIPMENT INCLUDED.—The term 'recycling equipment' includes any equipment which is used in the conversion of solid waste into a fuel or into useful energy such as steam, electricity, or hot water.

"(7) SHALE OIL EQUIPMENT.—The term 'shale oil equipment' means equipment for producing or extracting oil from oil-bearing shale rock but does not include equipment for hydrogenation, refining, or other process subsequent to retorting.

"(8) EQUIPMENT FOR PRODUCING NATURAL GAS FROM GEOPRESSURED BRINE.—The term 'equipment for producing natural gas from geopressured brine' means equipment which is used exclusively to extract natural gas described in section 613A(b)(3)(C)(i).

26 USC 613A.

"(9) EQUIPMENT MUST MEET CERTAIN STANDARDS TO QUALIFY.—Equipment qualifies under paragraph (3), (4), (5), (6), (7), or (8) only if it meets the performance and quality standards (if any) which—

"(A) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

"(B) are in effect at the time of the acquisition of the property.

"(10) EXISTING.—For purposes of this subsection, the term 'existing' means—

"(A) when used in connection with a facility, 50 percent or more of the basis of such facility is attributable to construction, reconstruction, or erection before October 1, 1978, or

"(B) when used in connection with an industrial or commercial process, such process was carried on in the facility as of October 1, 1978.

"(11) SPECIAL RULE FOR PROPERTY FINANCED BY INDUSTRIAL DEVELOPMENT BONDS.—In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be 5 percent.

26 USC 103.

"(12) INDUSTRIAL INCLUDES AGRICULTURAL.—The term 'industrial' includes agricultural.

"(m) APPLICATION OF CERTAIN TRANSITIONAL RULES.—Where the application of any provision of subsection (l) of this section or subsection (a)(2) or (c)(3) of section 46 is expressed in terms of a period, such provision shall apply only to—

Ante, p. 3194; 26 USC 46.

"(1) property to which section 46(d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or after the first day of such period, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection during such period,

"(2) property to which section 46(d) does not apply, acquired by the taxpayer during such period and placed in service by the taxpayer during such period, and

"(3) property to which section 46(d) applies, but only to the extent of the qualified investment (as determined under subsec-

tions (c) and (d) of section 46) with respect to qualified progress expenditures made during such period." 26 USC 46.

(c) SPECIAL RULES FOR APPLYING LIMITATION BASED ON TAX LIABILITY—

(1) Subsection (a) of section 46 is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULES IN THE CASE OF ENERGY PROPERTY.—Under regulations prescribed by the Secretary— Regulations.

"(A) IN GENERAL.—This subsection and subsection (b) shall be applied separately—

"(i) first with respect to so much of the credit allowed by section 38 as is not attributable to the energy percentage, 26 USC 38.

"(ii) second with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to energy property (other than solar or wind energy property), and

"(iii) then with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to solar or wind energy property.

"(B) RULES OF APPLICATION FOR ENERGY PROPERTY OTHER THAN SOLAR OR WIND ENERGY PROPERTY.—In applying this subsection and subsection (b) for taxable years ending after September 30, 1978, with respect to so much of the credit allowed by section 38 as is described in subparagraph (A)(ii)—

"(i) paragraph (3)(C) shall be applied by substituting '100 percent' for '50 percent',

"(ii) paragraphs (7), (8), and (9) shall not apply, and

"(iii) the liability for tax shall be the amount determined under paragraph (4) reduced by so much of the credit allowed by section 38 as is described in subparagraph (A)(i).

"(C) REFUNDABLE CREDIT FOR SOLAR OR WIND ENERGY PROPERTY.—In the case of so much of the credit allowed by section 38 as is described in subparagraph (A)(iii)—

"(i) paragraph (3) shall not apply, and

"(ii) for purposes of this title (other than section 38, this subpart, and chapter 63), such credit shall be treated as if it were allowed by section 39 and not by section 38." 26 USC 31, 6201. 26 USC 39.

(2) Section 6401 (relating to amounts treated as overpayments) is amended by adding at the end thereof the following new subsection: 26 USC 6401.

"(d) CROSS REFERENCE.—

"For rule allowing refund for excess investment credit attributable to solar or wind energy property, see section 46(a)(10)(C)."

(d) DENIAL OF INVESTMENT TAX CREDIT FOR CERTAIN PROPERTY.—

(1) AIR CONDITIONING, SPACE HEATERS, ETC.—Subparagraph (A) of section 48(a)(1) (defining section 38 property) is amended to read as follows: 26 USC 48.

"(A) tangible personal property (other than an air conditioning or heating unit), or".

26 USC 48.

(2) BOILERS FUELED BY OIL OR GAS.—Subsection (a) of section 48 (defining section 38 property) is amended by adding at the end thereof the following new paragraph:

"(10) BOILERS FUELED BY OIL OR GAS.—

"(A) IN GENERAL.—The term 'section 38 property' does not include any boiler primarily fueled by petroleum or petroleum products (including natural gas) unless the use of coal is precluded by Federal air pollution regulations (or by State air pollution regulations in effect on October 1, 1978) or unless the use of such boiler will be an exempt use within the meaning of subparagraph (B).

"(B) EXEMPT USE DEFINED.—For purposes of subparagraph (A), the term 'exempt use' means—

"(i) use in an apartment, hotel, motel, or other residential facility,

"(ii) use in a vehicle, aircraft, or vessel, or in transportation by pipeline,

"(iii) use on a farm for farming purposes (within the meaning of section 6420(c)),

26 USC 6420.

"(iv) use in—

"(I) a shopping center,

"(II) an office building,

"(III) a wholesale or retail establishment,

"(IV) any other facility which is not an integral part of manufacturing, processing, or mining, or

"(V) any facility for the production of electric power having a heat rate of less than 9,500 Btu's per kilowatt hour and which is capable of converting to synthetic fuels (as certified by the Secretary),

"(v) use in the exploration for, or the development, extraction, transmission, or storage of, crude oil, natural gas, or natural gas liquids, and

"(vi) use in Hawaii.

Except as provided in clauses (iv)(V) and (vi) of the preceding sentence, the term 'exempt use' does not include use of a boiler which is public utility property (within the meaning of section 46(f)(51))."

26 USC 46.

26 USC 167.

(3) DENIAL OF RAPID DEPRECIATION FOR BOILERS FUELED BY OIL OR GAS.—Section 167 (relating to depreciation) is amended by redesignating subsection (p) as subsection (r) and by inserting after subsection (o) the following new subsection:

"(p) STRAIGHT LINE METHOD FOR BOILERS FUELED BY OIL OR GAS.—In the case of any boiler which, by reason of section 48(a)(10), is not section 38 property—

26 USC 48.

"(1) subsections (b), (j), and (l) shall not apply, and

"(2) the term 'reasonable allowance' as used in subsection (a) shall mean only an allowance computed under the straight line method using a useful life equal to the class life prescribed by the Secretary under subsection (m) which is applicable to such property (determined without regard to the last sentence of subsection (m)(1))."

26 USC 48 note.

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to property which is placed in service after September 30, 1978.

(B) BINDING CONTRACTS.—The amendments made by this subsection shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer.

(e) DEPRECIATION ALLOWANCE IN CASE OF RETIREMENT OR REPLACEMENT OF CERTAIN OIL AND GAS BOILERS, ETC.—

(1) IN GENERAL.—Section 167 is amended by inserting after subsection (p) the following new subsection: 26 USC 167.

"(q) RETIREMENT OR REPLACEMENT OF CERTAIN BOILERS, ETC., FUELED BY OIL OR GAS.—

"(1) IN GENERAL.—If—

"(A) a boiler or other combustor was in use on October 1, 1978, and as of such date the principal fuel for such combustor was petroleum or petroleum products (including natural gas), and

"(B) the taxpayer establishes to the satisfaction of the Secretary that such combustor will be retired or replaced on or before the date specified by the taxpayer,

then for the period beginning with the taxable year in which subparagraph (B) is satisfied, the term 'reasonable allowance' as used in subsection (a) includes an allowance under the straight line method using a useful life equal to the period ending with the date established under subparagraph (B).

"(2) INTEREST.—If the retirement or replacement of any combustor does not occur on or before the date referred to in paragraph (1)(B)—

"(A) this subsection shall cease to apply with respect to such combustor as of such date, and

"(B) interest at the rate determined under section 6621 on the amount of the tax benefit arising from the application of this subsection with respect to such combustor shall be due and payable for the period during which such tax benefit was available to the taxpayer and ending on the date referred to in paragraph (1)(B)." 26 USC 6621.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years ending after the date of the enactment of this Act. 26 USC 167 note.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. TREATMENT OF INTANGIBLE DRILLING COSTS FOR PURPOSES OF THE MINIMUM TAX.

Subsection (b) of section 308 of the Tax Reduction and Simplification Act of 1977 is amended by striking out ", and before January 1, 1978". 26 USC 57 note.

SEC. 402. OPTION TO DEDUCT INTANGIBLE DRILLING COSTS IN THE CASE OF GEOTHERMAL DEPOSITS.

(a) IN GENERAL.—Subsection (c) of section 263 (relating to intangible drilling and and development costs in the case of oil and gas wells) is amended— 26 USC 263.

(1) by adding at the end thereof the following new sentence: "Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e) *Post*, p. 3203.

(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.", and

(2) by amending the subsection heading to read as follows:

"(c) INTANGIBLE DRILLING AND DEVELOPMENT COSTS IN THE CASE OF OIL AND GAS WELLS AND GEOTHERMAL WELLS.—".

(b) MINIMUM TAX ON INTANGIBLE DRILLING COSTS IN THE CASE OF GEOTHERMAL WELLS.—

26 USC 57.

(1) Paragraph (11) of section 57(a) (relating to intangible drilling costs) is amended by striking out "oil and gas properties" each place it appears (including in the heading of subparagraph (C)) and inserting in lieu thereof "oil, gas, and geothermal properties".

(2) Clause (i) of section 57(a)(11)(B) is amended by striking out "oil and gas wells" and inserting in lieu thereof "oil, gas, and geothermal wells".

(3) Paragraph (11) of section 57(a) is amended by adding at the end thereof the following new subparagraph:

"(D) PARAGRAPH APPLIED SEPARATELY WITH RESPECT TO GEOTHERMAL PROPERTIES AND OIL AND GAS PROPERTIES.—This paragraph shall be applied separately with respect to—

"(i) all oil and gas properties which are not described in clause (ii), and

"(ii) all properties which are geothermal deposits (as defined in section 613(e)(3))."

Post, p. 3203.

(c) GAIN FROM DISPOSITION OF INTERESTS IN GEOTHERMAL WELLS.—

26 USC 1254.

(1) Paragraphs (1) and (2) of section 1254(a) (relating to gain from disposition of interest in oil or gas property) are each amended by striking out "oil or gas property" each place it appears and inserting in lieu thereof "oil, gas, or geothermal property".

(2) Paragraph (3) of section 1254(a) (defining oil or gas property) is amended to read as follows:

"(3) OIL, GAS, OR GEOTHERMAL PROPERTY.—The term 'oil, gas, or geothermal property' means any property (within the meaning of section 614) with respect to which any expenditures described in paragraph (1)(A) are properly chargeable."

26 USC 614.

(3) The section heading of section 1254 is amended by striking out "OIL OR GAS" and inserting in lieu thereof "OIL, GAS, OR GEOTHERMAL".

(4) The table of sections for part IV of subchapter P of chapter 1 is amended by striking out "oil or gas" in the item relating to section 1254 and inserting in lieu thereof "oil, gas, or geothermal".

26 USC 1231.

26 USC 751.

(5) Subsection (c) of section 751 (relating to unrealized receivables) is amended by striking out "oil and gas property" and inserting in lieu thereof "oil, gas, or geothermal property".

(d) APPLICATION OF AT RISK RULES TO GEOTHERMAL DEPOSITS.—

26 USC 465.

(1) Paragraph (1) of section 465(c) (defining activities to which at risk rules apply) is amended by striking out "or" at the end of subparagraph (C), by adding ", or" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(3))".

(2) Paragraph (2) of section 465(c) is amended by striking out "or" at the end of subparagraph (C), by adding "or" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) geothermal property (as determined under section 614)",. 26 USC 614.

(e) EFFECTIVE DATE.— 26 USC 263 note.

(1) IN GENERAL.—The amendments made by this section shall apply with respect to wells commenced on or after October 1, 1978, in taxable years ending on or after such date.

(2) ELECTION.—The taxpayer may elect to capitalize or deduct any costs to which section 263(c) of the Internal Revenue Code of 1954 applies by reason of the amendments made by this section. 26 USC 263. Any such election shall be made before the expiration of the time for filing claim for credit or refund of any overpayment of tax imposed by chapter 1 of such Code with respect to the taxpayer's first taxable year to which the amendments made by this section apply and for which he pays or incurs costs to which such section 263(c) applies by reason of the amendments made by this section. Any election under this paragraph may be changed or revoked at any time before the expiration of the time referred to in the preceding sentence, but after the expiration of such time such election may not be changed or revoked.

SEC. 403. DEPLETION FOR GEOTHERMAL DEPOSITS AND NATURAL GAS FROM GEOPRESSURED BRINE.

(a) GEOTHERMAL DEPOSITS.—

(1) IN GENERAL.—Section 613 (relating to percentage depletion) is amended by adding at the end thereof the following new subsection: 26 USC 613.

"(e) PERCENTAGE DEPLETION FOR GEOTHERMAL DEPOSITS.—

"(1) IN GENERAL.—In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

"(A) such deposits shall be treated as listed in subsection (b), and

"(B) the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b).

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1)—

"In the case of taxable years beginning in calendar year—	The applicable percentage is—
1978, 1979, or 1980	22
1981	20
1982	18
1983	16
1984 and thereafter	15

"(3) GEOTHERMAL DEPOSIT DEFINED.—For purposes of paragraph (1), the term 'geothermal deposit' means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not 26 USC 613A. apply to a geothermal deposit which is located outside the United States or its possessions."

(2) TECHNICAL AMENDMENTS.—

(A) Paragraph (1) of section 613(c) (defining gross income from the property) is amended by inserting "and other than a geothermal deposit" after "oil or gas well".

26 USC 613A.

(B) Paragraph (1) of section 613A(b) is amended—

(i) by inserting "and" at the end of subparagraph (A),

(ii) by striking out "and" at the end of subparagraph (B), and

(iii) by striking out subparagraph (C).

26 USC 614.

(C) Subsection (b) of section 614 (relating to special rules as to operating mineral interest in oil and gas wells) is amended—

(i) by inserting "OR GEOTHERMAL DEPOSITS" after "GAS WELLS" in the subsection heading, and

(ii) by inserting "or geothermal deposits" after "gas wells" in so much of the text as precedes paragraph (1) thereof.

(D) Subsection (c) of section 614 is amended by striking out "oil and gas wells" each place it appears and inserting in lieu thereof "oil and gas wells and geothermal deposits".

(b) NATURAL GAS FROM GEOPRESSURED BRINE.—

26 USC 613A.

(1) IN GENERAL.—Subsection (b) of section 613A (relating to exemption for certain domestic gas wells) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) NATURAL GAS FROM GEOPRESSURED BRINE.—The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section."

26 USC 611.

26 USC 613.

Supra.

(2) QUALIFIED NATURAL GAS FROM GEOPRESSURED BRINE.—Paragraph (3) of section 613A(b) (as redesignated by paragraph (1)) is amended by adding at the end thereof the following new subparagraph:

"(C) QUALIFIED NATURAL GAS FROM GEOPRESSURED BRINE.—The term 'qualified natural gas from geopressured brine' means any natural gas—

"(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

Post, p. 3397.

"(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984."

26 USC 613 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date.

26 USC 613A note.

(d) COORDINATION WITH OTHER PROVISION.—Any allowance for depletion allowed by reason of the amendments made by subsection (b) shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978.

Post, p. 3366.

SEC. 404. REREFINED LUBRICATING OIL.

26 USC 4093.

(a) IN GENERAL.—Section 4093 (relating to exemption of sales to producers) is amended to read as follows:

"SEC. 4093. EXEMPTIONS.

"(a) SALES TO MANUFACTURERS OR PRODUCERS FOR RESALE.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him. 26 USC 4091.

"(b) USE IN PRODUCING REREFINED OIL.—

"(1) SALES TO REREFINERS.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oil sold for use in mixing with used or waste lubricating oil which has been cleaned, renovated, or rerefined. Any person to whom lubricating oil is sold tax-free under this paragraph shall be treated as the producer of such lubricating oil.

"(2) USE IN PRODUCING REREFINED OIL.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oil used in producing rerefined oil to the extent that the amount of such lubricating oil does not exceed 55 percent of such rerefined oil.

"(3) REREFINED OIL DEFINED.—For purposes of this subsection, the term 'rerefined oil' means oil 25 percent or more of which is used or waste lubricating oil which has been cleaned, renovated, or rerefined."

(b) CONFORMING AMENDMENT.—Section 4092(a) is amended by striking out "4093" and inserting in lieu thereof "4093(a)". 26 USC 4092.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32 is amended by striking out the item relating to section 4093 and inserting in lieu thereof the following: 26 USC 4091.

"Sec. 4093. Exemptions."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act. 26 USC 4093 note.

Approved November 9, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-435 (Comm. on Ways and Means) and No. 95-1773 (Comm. of Conference).

SENATE REPORTS: No. 95-529 (Comm. on Finance) and No. 95-1324 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 123 (1977): July 18, considered and passed House.
Oct. 25-29, 31, considered and passed Senate, amended.
Vol. 124 (1978): Oct. 15, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 45 (1978): Nov. 9, Presidential statement.