

The Clean Renewable Energy and Conservation Tax Act of 2007

December 12, 2007

I. CLEAN RENEWABLE ENERGY INCENTIVES

RENEWABLE ENERGY

Extension and modification of Section 45. The proposal extends the placed-in-service date for two years (through December 31, 2010) for qualifying facilities: wind, closed-loop biomass; open-loop biomass; geothermal; small irrigation hydro; landfill gas; and trash combustion facilities. Also modifies the market value test for refined coal while increasing its emissions requirements for sulfur dioxide and mercury. The proposal also adds tidal energy as a qualifying resource and eliminates the third party sale rule for closed and open-loop biomass facilities. *The proposal is estimated to cost \$6.22 billion over ten years.*

Long-term extension and modification of solar energy and fuel cell investment tax credit. The bill extends the 30% investment tax credit for solar energy property and qualified fuel cell property and the 10% investment tax credit for microturbines for eight years (through the end of 2016). It also increases the \$500 per half kilowatt of capacity cap for qualified fuel cells to \$1,500 per half kilowatt of capacity. The bill removes an existing limitation that prevents public utilities from claiming the investment tax credit. The bill would also provide a new 10% investment tax credit for combined heat and power systems. The bill also allows these credits to be used to offset alternative minimum tax (AMT). *This proposal is estimated to cost \$602 million over 10 years.*

Long-term extension and modification of the residential energy-efficient property credit. The bill would extend the credit for residential solar property for six years (through the end of 2014). The bill would also increase the annual credit cap (currently capped at \$2,000) to \$4,000. The bill would include residential small wind equipment as property qualifying for this credit. The bill also allows the credit to be used to offset alternative minimum tax (AMT). *This proposal is estimated to cost approximately \$317 million over ten years.*

Sales of electric transmission property. The bill extends the present-law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies. Rather than recognizing the full amount of gain in the year of sale, this provision allows gain on such sales to be recognized ratably over an 8-year period. The rule applies to sales before January 1, 2010. *This proposal is revenue neutral over 10 years.*

Transmission Bonds. The bill creates a new category of tax exempt bonds for electric transmission facilities. The bonds fall within the regular state private activity bond cap limitations. *This proposal is estimated to cost \$96 million over 10 years.*

New Clean Renewable Energy Bonds (“CREBs”). The bill authorizes \$2 billion of new clean renewable energy bonds to finance facilities that generate electricity from the following resources: wind; closed-loop biomass; open-loop biomass; geothermal; small irrigation; hydropower; landfill gas; marine renewable; and trash combustion facilities. This \$2 billion authorization will be subdivided into thirds: 1/3 will be available for qualifying projects of State/local/tribal governments; 1/3 for qualifying projects of public power providers; and 1/3 for qualifying projects of electric cooperatives. *This proposal is estimated to cost \$550 million over 10 years.*

CARBON MITIGATION AND COAL

Carbon capture and sequestration (CCS) demonstration projects. The bill would provide \$2 billion of tax credits for the creation of advanced coal electricity projects and certain coal gasification projects that demonstrate the greatest potential for carbon capture and sequestration (CCS) technology. Of these \$2 billion of incentives, \$1.5 billion would be awarded to advanced coal electricity projects and \$500 million would be awarded to certain coal gasification projects. These tax credits would be awarded by Treasury through an application process, with the applicants that demonstrate the greatest carbon capture and sequestration percentage of total CO₂ emissions receiving the highest priority. Applications will not be considered unless applicants can demonstrate that either their advanced coal electricity project would capture and sequester at least 65% of the facility’s carbon dioxide emissions or that their coal gasification project would capture and sequester at least 75% of the facility’s carbon dioxide emissions. Once these credits are awarded, recipients that fail to meet these minimum levels of carbon capture and sequestration would forfeit their tax credits. *This proposal is estimated to cost \$1.794 billion over 10 years.*

Accelerated depreciation for CO₂ pipelines. In order to facilitate the creation of infrastructure to transport captured CO₂ to suitable sequestration sites, the bill would allow taxpayers to write-off the cost of CO₂ pipelines that are installed after the date of enactment and before January 1, 2011 using accelerated depreciation over a seven-year period (as opposed to the 15-year period allowed under current law). *This proposal is estimated to cost \$50 million over 10 years.*

Solvency for the Black Lung Disability Trust Fund. The bill would enact the President’s proposal to bring the Black Lung Disability Trust Fund out of debt. Under current law, an excise tax is imposed on coal at a rate of \$1.10 per ton for coal from underground mines and \$0.55 per ton for coal from surface mines (aggregate tax per ton capped at 4.4 percent of the amount sold by the producer). Receipts from this tax are deposited in the Black Lung Disability Trust Fund, which is used to pay compensation, medical and survivor benefits to eligible miners and their survivors and to cover costs of program administration. The Trust Fund is permitted to borrow from the general fund

any amounts necessary to make authorized expenditures if excise tax receipts do not provide sufficient funding. Reduced rates of excise tax apply after the earlier of December 31, 2013 or the date on which the Black Lung Disability Trust Fund has repaid, with interest, all amounts borrowed from the general fund of the Treasury. The President's Budget proposes that the current excise tax rate should continue to apply beyond 2013 until all amounts borrowed from the general fund of the Treasury have been repaid with interest. After repayment, the reduced excise tax rates of \$0.50 per ton for coal from underground mines and \$0.25 per ton for coal from surface mines would apply (aggregate tax per ton capped at 2 percent of the amount sold by the producer). The bill would enact the President's proposal (with a reduced rate after 2017). *This proposal is estimated to raise \$966 million over 10 years.*

Refund of certain coal excise taxes unconstitutionally collected from exporters. The Courts have determined that the Export Clause of the U.S. Constitution applies to the excise tax on exported coal and, therefore, such taxes are subject to a claim for refund. The bill would create a new procedure under which certain coal producers and exporters may claim a refund of these excise taxes that were imposed on coal exported from the United States. Under this procedure, coal producers or exporters that exported coal during the period beginning on or after October 1, 1990 and ending on or before the date of enactment of the bill, may obtain a refund (plus interest) from the Treasury of excise taxes paid on such exported coal and any interest accrued from the date of overpayment. *This proposal is estimated to cost \$120 million over 10 years.*

Carbon audit of the tax code. The bill directs the Secretary of the Treasury to request that the National Academy of Sciences undertake a comprehensive review of the tax code to identify the types of specific tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects. *This proposal has no revenue effect.*

II. TRANSPORTATION AND DOMESTIC FUEL SECURITY

BIOFUELS

Cellulosic alcohol production credit. The bill creates a new production tax credit for cellulosic alcohol produced for use as a fuel. The amount of this credit is equal to the difference between \$1.01 per gallon and the per gallon ethanol blender tax credit (currently 51 cents per gallon). For example, this credit would be \$1.01 per gallon if the ethanol blender credit were to expire and would be 55 cents per gallon if the ethanol blender credit were reduced to 46 cents under a different provision in this bill. The credit may only be claimed on up to 60 million gallons per taxpayer. This credit would be available through the end of 2013. *This proposal is estimated to cost \$482 million over 10 years.*

Expansion of allowance for property to produce cellulosic alcohol. Under current law, taxpayers are allowed to immediately write off 50% of the cost of facilities that produce cellulosic ethanol if such facilities are placed in service before January 1, 2013. Consistent with other provisions in the bill that seek to be technology neutral, the bill would allow this write off to be available for the production of other cellulosic alcohols in addition to cellulosic ethanol. *This proposal is estimated to cost \$1 million over 10 years.*

Coordination of ethanol blender credit with the renewable fuels standard (RFS). The bill ensures that the ethanol blender credit takes into account the additional incentive for the use of ethanol that the renewable fuel standard (RFS) provides. Upon the production or importation of 7.5 billion gallons of ethanol in any calendar year, the 51 cent ethanol credit will be reduced to 46 cents per gallon. *This proposal is estimated to raise \$854 million over 10 years.*

Extension of biodiesel production tax credit; extension and modification of renewable diesel tax credit. The bill extends for two years (through December 31, 2010) the \$1.00 and 50 cent per gallon production tax credits for biodiesel and the small biodiesel producer credit of 10 cents per gallon. The bill also extends for two years (through December 31, 2010) the \$1.00 per gallon production tax credit for diesel fuel created from biomass. The bill eliminates the requirement that the diesel fuel must be produced using a thermal depolymerization process. As a result, the credit will be available for any diesel fuel created from biomass without regard to the process used so long as the fuel is usable as a fuel in vehicles [or as aviation jet fuel]. The bill also clarifies that the \$1 per gallon production credit for renewable diesel is limited to diesel fuel that is produced solely from biomass. Diesel fuel that is created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50 cent per gallon tax credit for alternative fuels. Biodiesel that is imported and sold for export will not be eligible for the credit beginning the date of enactment. *The proposal is estimated to cost \$216 million over 10 years.*

Refinery expensing. The proposal extends for two years (through January 1, 2013) the placed-in-service requirement and the building construction contract requirement through 2009. The proposal provides 50% bonus depreciation for costs incurred for a new refinery or an existing refinery to increase total capacity by 5% or process nonconventional feedstocks at a rate equal or greater to 25% of the total throughput of the refinery. *The proposal is estimated to cost \$922 million over 10 years.*

Comprehensive study of biofuels. The bill directs the Secretary of the Treasury, in consultation with the Secretaries of Agriculture and Energy and the Administrator of the Environmental Protection Agency, to request that the National Academy of Sciences produce an analysis of current scientific findings relating to the future production of biofuels and the domestic effects of a dramatic increase in the production of biofuels. *This proposal has no revenue effect.*

ADVANCED TECHNOLOGY MOTOR VEHICLES

Plug-in electric drive vehicle credit. The bill establishes a new credit for each qualified plug-in electric drive vehicle placed in service during each taxable year by a taxpayer. The base amount of the credit is \$3,000. If the qualified vehicle draws propulsion from a battery with at least 5 kilowatt hours of capacity, the credit amount is increased by \$200, plus another \$200 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours up to 15 kilowatt hours. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records 60,000 sales. The credit is reduced in following calendar quarters. The credit is available against the alternative minimum tax (AMT). *This proposal is estimated to cost \$1.02 billion over 10 years.*

Hybrid conversion kits. The proposal creates a 20% investment tax credit, capped at \$2,500, for the cost of purchasing and installing a plug-in traction battery module used to convert a hybrid vehicle to a plug-in hybrid vehicle. The proposal expires December 31, 2010. *The score for this proposal is incorporated in the score of the plug-in vehicle credit, above.*

Incentives for idling reduction units and advanced insulation for heavy trucks. The bill provides an exemption from the heavy vehicle excise tax for the cost of idling reduction units, such as auxiliary power units (APUs), which are designed to eliminate the need for truck engine idling (e.g., to provide heating, air conditioning, or electricity) at vehicle rest stops or other temporary parking locations. The bill would also exempt the installation of advanced insulation, which can reduce the need for energy consumption by transportation vehicles carrying refrigerated cargo. Both of these exemptions are intended to reduce carbon emissions in the transportation sector. *This proposal is estimated to cost \$77 million over 10 years.*

OTHER TRANSPORTATION PROVISIONS

Restructuring of New York Liberty Zone tax credits. The bill would implement a proposal included in the President's FY 2008 Budget to provide the City of New York and the State of New York with tax credits for expenditures made for transportation infrastructure projects connecting with the New York Liberty Zone. *This proposal is estimated to cost \$1.106 billion over 10 years.*

Fringe benefit for bicycle commuters. The bill allows employers to provide employees that commute to work using a bicycle limited fringe benefits to offset the costs of such commuting (e.g., bicycle storage). *This proposal is estimated to cost \$10 million over 10 years.*

III. ENERGY CONSERVATION AND EFFICIENCY

CONSERVATION TAX CREDIT BONDS

Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds for green community programs and initiatives designed to reduce greenhouse gas emissions. There is a national limitation of \$3 billion which is allocated to States and municipalities. *This proposal is estimated to cost \$864 million over 10 years.*

Qualified Forestry Conservation Bonds. The bill creates a new category of tax credit bonds for qualified forestry projects designed to acquire land subject to native fish habitat conservation plans for conservation purposes. *This proposal is estimated to cost \$161 million over 10 years.*

EFFICIENCY

Extension and modification of credit for energy-efficiency improvements to existing homes. The bill extends the tax credits for energy-efficient existing homes for one year (through December 31, 2008) and includes energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for a consumer tax credit of \$300. *This proposal is estimated to cost \$402 million over 10 years.*

Extension of energy-efficient commercial buildings. The bill extends the energy-efficient commercial buildings deduction for five years (through December 31, 2013). *This proposal is estimated to cost \$901 million over 10 years.*

Modification and extension of energy-efficient appliance credit. The bill would modify the existing energy-efficient appliance credit and extend this credit for three years (through the end of 2010). *This proposal is estimated to cost \$344 million over 10 years.*

Seven-year depreciation for smart meters. The bill would allow electric utilities to depreciate smart electric meters over a seven-year period. *This proposal is estimated to cost \$1.02 billion over 10 years.*

IV. OTHER PROVISIONS

FORESTRY PROVISIONS

One-year enactment of the Timber Revitalization and Economic Enhancement (TREE) Act of 2007. The bill would enact for one-year the provisions of H.R. 1937 and S. 402 to provide a deduction for qualified timber gains and to modernize certain provisions applicable to timber real estate investment trusts (REITs). *This proposal is estimated to cost \$435 million over 10 years.*

OTHER

Income averaging for Exxon Valdez litigation amounts. The bill would allow commercial fishermen and other individuals whose livelihoods were negatively impacted by the 1989 Exxon Valdez oil spill to average any settlement or judgment-related income that they receive in connection with pending litigation in the federal courts over three years for federal tax purposes. The bill would also allow these individuals to use these funds to make contributions to retirement accounts. *This proposal is estimated to cost \$215 million over 10 years.*

Reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000 and Payment in Lieu of Taxes. The bill would reauthorize the Secure Rural Schools program through 2011. It also adjusts the funding distribution formula to take into account historic payment levels to counties, average income levels in counties and acreage of federal land. Finally, the provision also provides for full funding for the Payment in Lieu of Taxes program for 2009. *This proposal is estimated to cost \$1.863 billion over 10 years.*

Offset the cost of increasing the corporate average fuel economy (CAFE) standards. The bill would offset the revenue loss associated with the increase in the corporate average fuel economy (CAFE) standards. *The cost of increasing the CAFE standards has been estimated to cost \$2.114 billion over 10 years.*

V. REVENUE PROVISIONS

Modification to Section 199. The proposal excludes gross receipts of major integrated oil companies derived from the sale, exchange or other disposition of oil, natural gas, or any primary product thereof from the domestic production deduction for purposes of Section 199. Primary products do not include petrochemicals, medicinal products, insecticides, and alcohols. *The proposal is estimated to raise \$9.433 billion over 10 years.*

7-year amortization of geological and geophysical expenditures for certain major integrated oil companies. The bill increases the amortization period for geological and geophysical expenditures (G&G costs) from five years to seven years for large integrated oil companies. *This proposal is estimated to raise \$103 million over 10 years.*

Clarification of foreign oil and gas extraction income. The tax code limits the ability of oil and gas companies to claim foreign tax credits with respect to foreign oil and gas extraction income. The bill would expand the present-law foreign oil and gas extraction income rules to apply to all foreign income from production and other activity related to the sale of oil and gas. *This proposal is estimated to raise \$3.187 billion over 10 years.*

Modification of penalty for failure to file partnership returns. Currently, a penalty is imposed on partnerships that fail to timely file a return. The penalty amount is computed for each month the return is outstanding (not to exceed 5 months) and \$50 multiplied by the number of partners. The proposal increases the maximum number of months from 5 to 12 and increases the multiple from \$50 to \$100. The proposal applies to returns filed after the date of enactment. *The proposal raises \$655 million over ten years.*

Interest suspension. The Internal Revenue Code suspends the accrual of certain penalties and interest starting 22 months after the filing of the tax return if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. The proposal repeals the suspension of certain penalties and interest. *The proposal is estimated to raise \$128 million over ten years.*

Option to treat elective deferrals as after tax contributions. Governmental section 457(b) plans may include a qualified Roth contribution program under which plan participants are permitted to designate elective deferrals that could be otherwise deferred under the plan as Roth contributions subject to the present-law rules. Such a designated Roth contribution is includible in gross income in the year of deferral and a subsequent distribution of such contribution (and the income on such contributions) is excluded from gross income if the distribution is a qualified distribution. The proposal is effective for taxable years after December 31, 2007. The proposal is estimated to raise \$1.035 billion over ten years.

REVENUE PROVISIONS IN THE PRESIDENT'S FY 2008 BUDGET

Basis reporting by brokers on sales of stock. The bill creates mandatory cost basis reporting by brokers for transactions involving publicly traded securities. Covered securities are generally stock, debt, commodities, derivatives and other items as specified by the Treasury Secretary, which are acquired in the account or transferred to the account managed by the broker. The President's FY 2008 Budget recommends that Congress require basis reporting on security sales. The Treasury Department explains that this proposal is necessary because "compliance increases significantly for amounts that a third party reports to the IRS. The potential for non-compliance on sales of securities is considerable under current law, because the taxpayer's basis is not reported to the IRS. Requiring brokers to maintain records of the adjusted basis of securities sold by their customers and report this information to the IRS would increase compliance with capital gains reporting. In addition, such a requirement would provide significant simplification benefits by relieving taxpayers from the often complicated task of calculating adjusted basis to determine gain or loss on the sale of securities." The provision applies to stock acquired after January 1, 2009 and after January 1, 2011 for all other instruments. *This proposal is estimated to raise \$4.106 billion over 10 years.*

Extend FUTA taxes for one year. The Federal Unemployment Tax Act (“FUTA”) imposes a 6.2 percent gross tax rate on the first \$7,000 paid annually by covered employers to each employee. In 1976, Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate. The temporary surtax subsequently has been extended through 2007. The President’s FY 2008 Budget proposes extending the FUTA surtax. The Treasury Department states that “extending the surtax will support the continued solvency of the Federal unemployment trust funds and maintain the ability of the unemployment system to adjust to any economic downturns.” The bill would enact the President’s proposal for one year (through 2008). *This provision is estimated to raise \$1.446 billion over 10 years.*