The Energy Independence and Investment Act of 2008

September 11, 2008

I. CLEAN RENEWABLE ENERGY INCENTIVES

RENEWABLE ENERGY

Long-term Extension and Modification of Renewable Energy Production Tax Credit. The bill extends the placed-in-service date for the Section 45 renewable energy credit, through December 31, 2011. The bill expands the types of facilities qualifying for the credit to new biomass facilities and those that generate electricity from marine renewables (e.g., waves and tides). The bill updates the definition of an open-loop biomass facility, the definition of a trash combustion facility, and the definition of a non-hydroelectric dam. The bill also extends the refined coal credit, while removing the market value test and increasing coal emissions standards. *The estimated cost of this proposal is $15.414 billion over ten years.*

Long-term Extension of Energy Credit. The bill extends the 30% investment tax credit for solar energy property and qualified fuel cell property, as well as the 10% investment tax credit for microturbines, for eight years (through 2016). The bill increases the $500 per half kilowatt of capacity cap for qualified fuel cells to $1,500 per half kilowatt of capacity, and adds small commercial wind as a category of qualified investment. The bill also provides a new 10% investment tax credit for combined heat and power systems. The bill also adds geothermal heat pumps and allows these credits to be used to offset the alternative minimum tax (AMT). *The estimated cost of this proposal is $1.919 billion over ten years.*

Long-term Extension and Modification of the Residential Energy-Efficient Property Credit. The bill extends the credit for residential solar property for eight years (through 2016), and increases the annual credit cap (currently $2,000) to $4,000 for solar electric investments. The bill adds residential small wind investment, capped at $4,000, and geothermal heat pumps, capped at $2,000, as qualifying property. The bill also allows the credit to be used to offset the AMT. *The estimated cost of this proposal is $907 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. *The estimated cost of this proposal is revenue-neutral over ten 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 wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, qualified hydropower, landfill gas, marine renewable and trash combustion facilities. This $2 billion authorization is subdivided into thirds: 1/3 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. The bill also provides an additional year for current allocations to issue bonds. *The estimated cost of this proposal is $551 million over ten years.*

Nuclear Production Credit: A taxpayer producing electricity at a qualifying advanced nuclear power facility can claim a credit equal to 1.8 cents per kilowatt hour of electricity produced for the 8-year period starting when the facility is placed in service. The aggregate amount of credit that a taxpayer may claim in any year during the 8-year period is subject to limitation based on allocated capacity and an annual limitation. A qualifying advanced nuclear facility is one for which the taxpayer has received an allocation of megawatt capacity from the Secretary of Treasury, in consultation with the Secretary of Energy, and is placed in service before January 1, 2021. The Secretary of Treasury may allocate up to 6,000 megawatts of capacity. This proposal increases the maximum allocation amount to 8,000 megawatts. Public-private partnerships will also be allowed to utilize the credit. *This proposal has no revenue effect.*

CARBON MITIGATION AND COAL

Carbon Capture and Sequestration (CCS) Demonstration Projects. The bill provides $2.5 billion in new 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 $2.5 billion of incentives, $2 billion will be awarded to advanced coal electricity projects and $500 million will be awarded to coal gasification projects. These tax credits will be awarded by Treasury through an application process, with applicants that demonstrate the greatest CO2 sequestration percentage receiving the highest priority. Applications will not be considered unless they can demonstrate that either their advanced coal electricity project would capture and sequester at least 65% of the facility's CO2 emissions or that their coal gasification project would capture and sequester at least 75% of the facility's CO2 emissions. Once these credits are awarded, recipients failing to meet these minimum levels of carbon capture and sequestration would forfeit these tax credits. *The estimated cost of this proposal is $2.373 billion over ten years.*

CO2 Capture Credit. The proposal provides a $10 credit per ton for the first 75 million metric tons of CO2 captured and transported from an industrial source for use in enhanced oil recovery and $20 credit per ton for CO2 captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO2 per year. The credit applies to CO2 stored or used in the United States. *The estimated cost of this proposal is $1.119 billion over ten years.*

Solvency for the Black Lung Disability Trust Fund. The bill would enact the President's FY 2009 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 (the aggregate tax per ton capped at 4.4% 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 also includes the President's proposal to restructure Black Lung Trust Fund debt. *The proposal is estimated to raise $1.287 billion over ten years.*

Refund of Certain Coal Excise Taxes Unconstitutionally Collected from Exporters. The Courts have determined that the Export Clause of the U.S. Constitution prevents the imposition of the coal excise tax on exported coal and, therefore, taxes collected on such exported coal are subject to a claim for refund. The bill creates 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 from the Treasury of excise taxes paid on such exported coal and any interest accrued from the date of overpayment. *The estimated cost of this proposal is $199 million over ten 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

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. The bill makes this benefit available for the production of other cellulosic biofuels in

addition to cellulosic ethanol. *This proposal is estimated to be revenue neutral over ten years.*

Extension of Biodiesel Production Tax Credit; Extension and Modification of Renewable Diesel Tax Credit. The bill extends for three years (through December 31, 2011) the $1.00 per gallon production tax credits for biodiesel and the small biodiesel producer credit of 10 cents per gallon. The bill also extends for three years (through December 31, 2011) the $1.00 per gallon production tax credit for diesel fuel created from biomass. The bill eliminates the current-law disparity in credit for biodiesel and agri-biodiesel and eliminates the requirement that renewable 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 home heating oil, as a fuel in vehicles, or as aviation jet fuel. The bill caps the $1 per gallon production credit for renewable diesel for facilities that co-process with petroleum to the first 60 million gallons per facility. Biodiesel that is imported and sold for export will not be eligible for the credit effective May 15, 2008. *The estimated cost of this proposal is $2.256 billion over ten years.*

Volumetric Ethanol Excise Tax Credit: The Volumetric Ethanol Excise Tax Credit (VEETC) was established in the American Jobs Creation Act of 2004, at a level of 51¢ per gallon. Per the 2008 farm bill, starting the year after which 7.5 billion gallons of ethanol are produced and/or imported in the United States, the value of the credit is reduced to 45¢ per gallon. VEETC is currently authorized through December 31, 2010. This bill extends VEETC, including the 10¢/gallon small producer credit, through 12/31/2011. *The estimated cost of this proposal is $4.978 billion over ten years.*

Fossil-Free Alcohol Production Tax Credit. The proposal creates a new small producer alcohol credit of 10 cents per gallon for facilities that produce ethanol through a process that does not use a fossil-based resource. The credit is available through December 31, 2011. *The estimated cost of this proposal is $210 million over ten years.*

Extension and Modification of Alternative Fuels Credit. The bill extends the alternative fuel excise tax credit under Section 6426 of the Code through December 31, 2011 for all fuels except for hydrogen (which maintains its current-law expiration date of September 30, 2014). Upon date of enactment, for liquid fuel derived from coal through the Fischer-Tropsch process ("coal-to-liquids"), to qualify as an alterative fuel, the fuel must be produced at a facility that separates and sequesters at least 50% of its CO2 emissions. The sequestration requirement increases to 75% on December 31, 2011. This 75% standard may be implemented prior to December 31, 2011, subject to certification of feasibility. The proposal further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit. *The proposal is estimated to cost $569 million over ten years.*

Extension and Expansion of the Alternative Refueling Stations Tax Credit. The bill extends the 30% alternative refueling property credit (capped at $30,000) for three years, through 2012. The provision provides a tax credit to businesses (e.g., gas stations) that

install alternative fuel pumps, such as fuel pumps that dispense fuels such as E85, compressed natural gas and hydrogen. The bill also adds electric vehicle recharging property to the definition of alternative refueling property. *The estimated cost of this proposal is $256 million over ten years.*

Publicly Traded Partnership Income Treatment of Alternative Fuels. The proposal permits publicly traded partnerships to treat the income derived from the transportation, or storage of certain alternative fuels as qualifying income for purposes of the publicly traded partnership rules. *The estimated cost of this proposal is $78 million over ten years.*

Percentage Depletion for Marginal Wells. The proposal extends for three years (through December 31, 2010) the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well. *The estimated cost of this proposal is $364 million over ten years.*

Refinery Expensing. The Energy Policy Act of 2005 established a temporary expensing provision for refinery property which increases total capacity by 5% or which processes nonconventional feedstocks at a rate equal or greater to 25% of the total throughput of the refinery. This bill extends the refinery expensing contract requirement and the placed-in-service requirement for two years. The proposal also qualifies refineries directly processing shale or tar sands. *The estimated cost of this proposal is $894 million over ten years.*

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 estimated cost of this proposal is $49 million over ten years.*

ADVANCED TECHNOLOGY VEHICLES

Plug-in Electric Drive Vehicle Credit. The bill establishes a new credit for qualified plug-in electric drive vehicles. The base amount of the credit is $2,500. If the qualified vehicle draws propulsion from a battery with at least 6 kilowatt hours of capacity, the credit amount is increased by $400, plus another $400 for each kilowatt hour of battery capacity in excess of 6 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 total number of qualified plug-in electric drive vehicles sold in the U.S. is at least 250,000. The credit is available against the alternative minimum tax (AMT). *The estimated cost of this proposal is $755 million over ten years.*

Other Vehicle Provisions. The bill extends the lean burn, heavy hybrid, and alternative fuel vehicle tax credit through 2011,and reduces the fuel cell credit to $7,500 at the end

of 2009. The credit is available against the alternative minimum tax (AMT). *The estimated cost of this proposal is $527 million over ten years*.

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 also exempts 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. *The estimated cost of this proposal is $95 million over ten years.*

III. ENERGY CONSERVATION AND EFFICIENCY

Qualified Energy Conservation Bonds. The bill creates a new category of tax credit bonds to finance State and local government initiatives designed to reduce greenhouse emissions. There is a national limitation of $3 billion, allocated to States, municipalities and tribal governments. *The estimated cost of this proposal is $1.025 billion over ten years.*

Extension and Modification of Credit for Energy-Efficiency Improvements to Existing Homes. The bill extends the tax credits for energy-efficient existing homes for 2009, 2010 and 2011, and includes energy-efficient biomass fuel stoves as a new class of energy-efficient property eligible for a consumer tax credit of $300. The proposal also clarifies the efficiency standard for water heaters. *The estimated cost of this proposal is $2.509 billion over ten years.*

Extension of Credit for Energy-Efficiency Improvements to New Homes. The bill extends the new energy efficient home tax credit for three years, through December 31, 2011. *The estimated cost of the proposal is $143 million over ten years.*

Extension of Energy-Efficient Commercial Buildings. The bill extends the energy-efficient commercial buildings deduction for five years, through December 31, 2013. *The estimated cost of this proposal is $891 million over ten years.*

Modification and Extension of Energy-Efficient Appliance Credit. The bill modifies the existing energy-efficient appliance credit and extend this credit for three years, through the end of 2010. *The estimated cost of this proposal is $322 million over ten years.*

Accelerated Depreciation for Smart Meters and Smart Grid Systems. The bill provides accelerated depreciation for smart electric meters and smart electric grid systems. Under current law, taxpayers are generally able to recover the cost of this property over the course of 20 years. The bill allows taxpayers to recover the cost of this

property over a 7-year period. *The estimated cost of this proposal is $1.716 billion over ten years*.

Extension and Modification of Qualified Green Building and Sustainable Design Project Bond. The bill extends the authority to issue qualified green building and sustainable design project bonds through the end of 2012. The bill would also clarifies the application of the reserve account rules to multiple bond issuances. *The estimated cost of this proposal is $45 million over ten years.*

Investments in Recycling. The bill allows taxpayers to claim accelerated depreciation for the purchase of equipment used to collect, distribute or recycle a variety of commodities. *The estimated cost of this proposal is $162 million over ten years.*

IV. OTHER PROVISIONS

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 make it more equitable, by taking 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. *The estimated cost of this proposal is $3.264 billion over ten years.*

Uniform Definition of a Qualifying Child. Present law provides a uniform definition of a qualifying child for various tax benefits, including the earned income tax credit (EITC), the child tax credit, and the dependent care credit. Based on the current definition, some people lose out on some child related tax incentives while others abuse these incentives. For example, as a result of current law, certain families may receive tax incentives even though the parents' income is too high to qualify, while denying the EITC to low income working taxpayers who are guardians of their siblings. In addition, dependent filers can claim the child tax credit, even though they are generally ineligible for other child related incentives. The offset proposal would restore eligibility for the earned income credit to certain lower-income siblings while eliminating a tax planning opportunity for more affluent families for the child related tax incentives. *JCT estimates this proposal will raise $1.71 billion over ten years. The estimate includes a reduction in outlays of $1.4 billion over ten years.*

V. REVENUE PROVISIONS

Modification to Section 199. Section 199 provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) equal to a portion of the taxpayer's qualified production activities income. In 2008, the Section 199 deduction is 6%, rising to 9% in 2009 and thereafter. The bill repeals the Section 199 manufacturing deduction for major integrated and state-owned oil and gas companies, while maintaining the 6%

rate for other oil and gas companies. *The proposal is estimated to raise $13.904 billion over ten years.*

Outer Continental Shelf (OCS) Excise Tax. The proposal establishes an excise tax on the removal price of any taxable crude oil or natural gas produced from Federal submerged lands on the OCS in the Gulf of Mexico pursuant to a Federal OCS lease. The removal price is defined as the amount for which the barrel of taxable crude oil or barrel-of-oil equivalent of natural gas is sold by the taxpayer. In the case of sales between related parties, the removal price is the constructive sales price of the oil or natural gas. The proposal allows as a credit against the excise tax an amount equal to royalties paid under Federal law with respect to taxable crude oil or natural gas, with the credit not to exceed the tax paid. The excise tax would be set at 13%, and would apply to crude oil or natural gas removed after the date of enactment. *The proposal is estimated to raise $11.663 billion over ten years.*

Modification of Section 907. The proposal eliminates the distinction between foreign oil and gas extraction income ("FOGEI") and foreign oil related income ("FORI"). FOGEI relates to upstream production to the point the oil leaves the wellhead. FORI is defined as all downstream processes once the oil leaves the wellhead (i.e. transportation, refining). Currently, FOGEI and FORI have separate foreign tax credit limitations. This proposal combines FOGEI and FORI into one foreign oil basket and applies the existing FOGEI limitation. *The proposal is estimated to raise $2.23 billion over ten years.*

Basis Reporting by Brokers on Sales of Stock. This provision creates mandatory basis reporting measures to the IRS by brokers for transactions involving publicly traded securities, such as stock, debt, commodities, derivatives and other items as specified by the Treasury. *The proposal is estimated to raise $7.98 billion over ten years.*

Oil Spill Liability Trust Fund. The proposal extends the oil spill tax through December 31, 2017, increases the per barrel tax from 5 cents to 12 cents, and repeals the requirement that the tax be suspended when the unobligated balance exceeds $2.7 billion. *The proposal is estimated to raise $3.4 billion over ten years.*