The Energy Improvement and Extension Act of 2008

September 17, 2008

I. RENEWABLE ENERGY INCENTIVES

Extension and Modification of Production Tax Credit. The bill extends the placed-in-service date for the Section 45 credit through December 31, 2009 in the case of wind and refined coal, and through December 31, 2010 in the case of other sources. The bill expands the types of facilities qualifying for the credit to new biomass facilities and to 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 increases emissions standards on the refined coal credit and removes its market value test. *The estimated cost of this proposal is $5.817 billion over 10 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, 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 and geothermal heat pumps. The bill allows these credits to be used to offset the alternative minimum tax (AMT). *The estimated cost of this proposal is $1.942 billion over 10 years.*

Long-term Extension and Modification of the Residential Energy-Efficient Property Credit. The bill extends the credit for residential solar property for eight through 2016, and removes the credit cap (currently $2,000) 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 allows the credit to be used to offset the AMT. *The estimated cost of this proposal is $1.294 billion over 10 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 estimated to be revenue-neutral over 10 years.*

New Clean Renewable Energy Bonds ("CREBs"). The bill authorizes $800 million 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 $800 million 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 extends the termination date for existing CREBs by one year. *The estimated cost of this proposal is $267 million over 10 years.*

II. CARBON MITIGATION AND COAL

Carbon Capture and Sequestration (CCS) Demonstration Projects. The bill provides $1.5 billion in new tax credits for the creation of advanced coal electricity projects (Section 48A) and certain coal gasification projects (Section 48B) that demonstrate the greatest potential for carbon capture and sequestration (CCS) technology. Of these $1.5 billion of incentives, $1.25 billion will be awarded to advanced coal electricity projects, and $250 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 CO_2 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 CO_2 emissions or that their coal gasification project would capture and sequester at least 75% of the facility's CO_2 emissions. Once these credits are awarded, recipients failing to meet these minimum levels of carbon capture and sequestration would forfeit these tax credits. The bill also clarifies that gasification projects producing transportation grade liquid fuels are eligible under Section 48B. *The estimated cost of this proposal is $1.424 billion over 10 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 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 10 years.*

CO_2 Capture Credit. The bill 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 CO_2 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 CO_2 per year. The credit applies to CO_2 stored or used in the United States. *The estimated cost of this proposal is $1.119 billion over ten years.*

Refund of Coal Excise Taxes Unconstitutionally Collected from Exporters. The Courts have determined that the Export Clause of the 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 U.S. Under this procedure, coal producers or exporters that exported coal during the period beginning on or after 1/1/90 and ending on or before the date of enactment of the bill, may obtain a refund from Treasury of excise taxes paid on such exported coal and any interest accrued from date of overpayment. *The estimated cost is $199 million over 10 years.*

Steel Industry Fuel: The bill adds a credit for coal used in the manufacture of coke, a feedstock used in steel production. The credit amount is $2 per barrel-equivalent of oil, available for facilities that place in service before January 1, 2010. *The estimated cost of this proposal is $61 million over 10 years.*

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

III. TRANSPORTATION & DOMESTIC FUEL SECURITY

Plug-in Electric Drive Vehicle Credit. The bill establishes a new credit for plug-in electric drive vehicles. The credit for passenger vehicles and light trucks ranges from $2500 to $7500. 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. exceeds 250,000. The credit is available against the alternative minimum tax (AMT). *The estimated cost of this proposal is $758 million over 10 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 exemptions are intended to reduce carbon emissions in the transportation sector. *The estimated cost of this proposal is $95 million over 10 years.*

Bicycle Commuters. The bill allows employers to provide employees who commute to work by bicycle limited fringe benefits to offset the costs of such commuting (e.g., storage). *The estimated cost of this proposal is $10 million over 10 years.*

Expansion of Allowance for Cellulosic Biofuels Property. Taxpayers are allowed to immediately write off 50% of the cost of facilities that produce cellulosic biofuels 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 10 years.*

Extension of Biodiesel Production Tax Credit; Extension and Modification of Renewable Diesel Tax Credit. The bill extends the $1.00 per gallon production tax credit for biodiesel and the 10¢/gallon credit for small biodiesel producers through 2009. The bill also extends 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. Diesel fuel created by co-processing biomass with other feedstocks (e.g., petroleum) will be eligible for the 50¢/gallon tax credit for alternative fuels. Biodiesel imported and sold for export will not be eligible for the credit effective May 15, 2008. *The estimated cost of this proposal is $451 million over 10 years.*

Extension and Modification of Alternative Fuels Credit. The bill extends the alternative fuel excise tax credit under Section 6426 through December 31, 2009 for all fuels except hydrogen (which maintains its current-law expiration date of September 30, 2014). Beginning 10/1/09, qualified fuel derived from coal through the Fischer-Tropsch process must be produced at a facility that separates and sequesters at least 50% of its CO_2 emissions. This sequestration requirement increases to 75% on 12/31/09. 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 estimated cost of this proposal is $61 million over 10 years.*

Extension and Expansion of the Alternative Refueling Stations Credit. The bill extends the 30% credit for alternative refueling property, such as natural gas or E85 pumps, through 2010. The bill also adds electric vehicle recharging property to the types of property eligible for the credit. The credit for hydrogen refueling property is unchanged. *The estimated cost of this proposal is $87 million over 10 years.*

Publicly Traded Partnership Income Treatment of Alternative Fuels. The proposal permits publicly traded partnerships to treat income derived from the transportation, or storage of certain alternative fuels, as well as anthropogenic CO_2, as qualifying income for purposes of the publicly traded partnership rules. *The estimated cost of this proposal is $119 million over 10 years.*

Percentage Depletion for Marginal Wells. The proposal extends for 2009 the suspension on the taxable income limit for purposes of depreciating a marginal oil or gas well. *The estimated cost of this proposal is $124 million over 10 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 both the refinery expensing contract requirement and the placed-in-service requirement for this expensing provision for two years. The bill also qualifies refineries directly processing shale or tar sands for this provision. *The estimated cost of this proposal is $894 million over 10 years.*

IV. 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 $800 million, allocated to States, municipalities and tribal governments. *The estimated cost of this proposal is $276 million over 10 years.*

Extension and Modification of Credit for Energy-Efficiency Improvements to Existing Homes. The bill extends the tax credit for energy-efficient existing homes for 2009, 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 $827 million over 10 years.*

Extension of Energy-Efficient Buildings Deduction. Current law allows taxpayers to deduct the cost of energy-efficient property installed in commercial buildings. The amount deductible is up to $1.80 per square foot of building floor area for buildings achieving a 50% energy savings target. The energy savings must be accomplished through energy and power cost reductions for the building's heating, cooling, ventilation, hot water, and interior lighting systems. This 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 10 years.*

Extension of Credit for Energy-Efficiency Improvements to New Homes. Under current law, contractors receive a credit for the construction of energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling. The credit equals $1,000 for homes meeting a 30% efficiency standard, $2,000 for homes meeting a 50% standard. The bill extends the new energy efficient home tax credit through 2009. *The estimated cost of this proposal is $61 million over 10 years.*

Modification and Extension of Energy-Efficient Appliance Credit. Manufacturers receive a tax credit for the production of energy-efficient dishwashers, clothes washers and refrigerators. Credit is provided only for appliances that are U.S.-produced. The bill increases the credit's standards and amounts, and extends the credit for appliances manufactured through 2010. *The estimated cost of this proposal is $322 million over 10 years.*

Accelerated Depreciation for Smart Meters and Smart Grid Systems. The bill provides accelerated depreciation for smart electric meters and smart electric grid equipment. Under current law, taxpayers are generally able to recover the cost of this property over a 20-year period. The bill allows taxpayers to recover the cost of this property over a 10-year period, unless the property already qualifies under a shorter recovery schedule. *The estimated cost of this proposal is $915 million over 10 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 also clarifies the application of the reserve account rules to multiple bond issuances. *The estimated cost of this proposal is $45 million over 10 years.*

Investments in Recycling. The bill allows taxpayers to claim accelerated depreciation for purchase of equipment used to collect, distribute or recycle a variety of commodities. *The estimated cost of this proposal is $162 million over 10 years.*

V. REVENUE PROVISIONS

Modification to Section 199. Section 199 provides a deduction – currently 6% -- equal to a portion of the taxpayer's qualified production activities income. The Section 199 deduction is scheduled to increase to 9% in 2010. This bill would freeze the Section 199 deduction at 6% for gross receipts derived from the sale, exchange or other disposition of oil, natural gas, or any primary product thereof. *This proposal is estimated to raise $4.906 billion over 10 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 Treasury. *The proposal is estimated to raise $6.67 billion over 10 years.*

FUTA Surtax. 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 2008. The President's FY 2009 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 2009). *This proposal is estimated to raise $1.474 billion over 10 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. *This proposal is estimated to raise $2.23 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 8 cents from 2009 though 2016, and to 9 cents in 2017. The bill also repeals the requirement that the tax be suspended when the unobligated balance exceeds $2.7 billion. *This proposal is estimated to raise $1.715 billion over 10 years.*