

ENERGY PROGRAM

3

SECTION-BY-SECTION DESCRIPTION OF H.R. 6831 THE ADMINISTRATION'S TAX PROPOSALS RELATING TO ENERGY

PREPARED FOR THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



MAY 13, 1977

CONTENTS

	Page
Introduction.....	1
Administration tax proposals relating to energy:	
General provisions.....	3
I. Short title.....	3
II. Findings.....	3
III. National energy goals.....	3
IV. References.....	3
Tax proposals.....	5
I. Residential conservation.....	5
A. Home weatherization credit.....	5
B. Solar and other energy saving equipment credit.....	6
II. Fuel inefficiency tax and rebate.....	9
III. Standby gasoline tax and rebate.....	11
IV. Other transportation proposals.....	12
A. Motorboat and general aviation fuel..	12
B. Repeal of excise tax on buses.....	13
V. Business energy tax credit.....	14
A. Administration proposal.....	14
B. Business energy conservation and conversion incentives in the 94th Congress.....	15
1. Insulation.....	15
2. Solar energy equipment.....	16
3. Geothermal equipment.....	17
4. Special investment credit for wind-related energy equipment.....	17
5. Portable air conditioners and heating units.....	17
6. Denial of investment credit for petroleum-powered electrical generators.....	18
7. Qualified energy conversion and conservation equipment.....	18
8. Qualified railroad equipment..	19
9. Recycling.....	20
10. Rapid amortization of pollution-control equipment.....	21
VI. Crude oil equalization tax and rebate.....	22
VII. Industrial use of oil and natural gas.....	25
VIII. Energy development tax incentives.....	28
A. Geothermal tax incentive.....	28
B. Minimum tax treatment of intangible drilling costs.....	28

IV

Provisions considered in the 94th Congress but not included in the administration proposals-----	Page 30
I. Import controls-----	30
A. Import quotas and licenses-----	30
B. Import Duties-----	31
C. Oil swaps-----	33
II. Miscellaneous provisions-----	34
A. Repeal of excise tax on rerefined lubricating oil-----	34
B. Repeal of excise tax on radial tires-----	35
C. Excise tax exemption for nonhighway use of motor fuels-----	35
III. Energy conservation and conversion trust fund-----	36
Major non-tax legislative proposals-----	38
I. Conservation-----	38
A. Transportation-----	38
B. Buildings and equipment-----	38
C. Appliances-----	38
D. Cogeneration of electricity and process steam-----	39
E. Utility rate reform-----	39
II. Coal and nuclear power-----	39
A. Coal conversion regulatory policy-----	39
B. Nuclear power-----	40
Proposals for Administrative Action-----	41
Energy legislation originating in other committees-----	42
I. Energy Policy and Conservation Act—Public Law 94-163-----	42
II. Naval Petroleum Reserves Production Act of 1976—Public Law 94-258-----	43
III. Energy Conservation and Production Act—Public Law 94-385-----	44
IV. Alaskan Natural Gas Transportation Act of 1976—Public Law 94-586-----	46
V. Emergency Natural Gas Act of 1977—Public Law 95-2-----	47

INTRODUCTION

This pamphlet is intended to describe in detail those portions of the Administration's energy program (H.R. 6831) which are to be referred to the Committee on Ways and Means for its consideration. This description includes present law, as well as the relevant legislative proposals considered by the 94th Congress relating to tax incentives for energy conservation and conversion and the development of new energy resources. The pamphlet also includes legislative proposals considered by the 94th Congress which are not closely related to any of the Administration's proposals.

In addition, this pamphlet summarizes the major nontax legislative proposals of the Administration which are to be considered by other committees and the provisions in the Administration's program which are to be dealt with by administrative action and do not require new legislative action. Finally, the pamphlet contains a summary of the major nontax energy legislation which was enacted in the 94th Congress and the early days of the 95th Congress.

In the 94th Congress, the major bill considered in connection with energy tax proposals was H.R. 6860. This bill was reported by the Ways and Means Committee and was amended on the House floor. Markup sessions on H.R. 6860 were held by the Finance Committee in July, 1975, and tentative decisions were made in many areas, but the bill was not reported at that time. Many of the provisions approved by the Finance Committee were added to H.R. 10612, the Tax Reform Act of 1976, as Title XX, but all of the energy provisions were deleted in conference. In August of 1976 the Finance Committee reported the provisions of Title XX (as passed the Senate) as an amended version of H.R. 6860.

This bill was never taken up on the Senate floor and the provisions expired with the adjournment of the 94th Congress.

Unless otherwise indicated, the provisions discussed below with respect to action in the 94th Congress reflect H.R. 6860 as approved by the Ways and Means Committee. Also, unless otherwise specifically indicated, it may be assumed that references to the Finance Committee bill refer to title XX of the Tax Reform Act. Amendments on the House floor or on the Senate floor (to Title XX of the Tax Reform Act) are specifically noted.

This is the third in a series of pamphlets being prepared by the Joint Committee staff to provide more detailed analysis of the Administration's program and the various other alternatives that will be developed for consideration by the Committee on Ways and Means.

ADMINISTRATION TAX PROPOSALS RELATING TO ENERGY

GENERAL PROVISIONS

I. Short Title (section 1 of the Administration bill)

This section designates the bill as the "National Energy Act."

II. Findings (section 2 of the Administration bill)

Under this provision, the Congress is requested to find that—

(1) the United States faces an energy shortage arising from increasing demand for energy, and for oil and natural gas in particular, and insufficient domestic supply of oil and natural gas to satisfy that demand;

(2) unless effective measures are taken to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market and increasingly vulnerable to interruptions of foreign oil supply;

(3) the United States can significantly reduce its demand for oil and its demand for natural gas for non-essential uses by carrying out an effective conservation and fuel efficiency program in all sectors of energy use, through reform of utility rate structures, and conversion by industrial firms and utilities from oil and natural gas to coal and other fuels; and

(4) the United States needs to develop renewable and essentially inexhaustible energy sources to ensure sustained long-term economic growth.

III. National Energy Goals (section 3 of the Administration bill)

Congress would establish the following established goals:

(1) Reduction of annual growth of United States energy demand to less than 2 percent.

(2) Reduction of the level of oil imports to less than 6 million barrels per day.

(3) Achievement of a 10-percent reduction in gasoline consumption from the 1977 level.

(4) Insulation of 90 percent of all American homes and all new buildings.

(5) An increase in annual coal production to at least 400 million tons over 1976 production.

(6) Use of solar energy in more than two and a half million homes.

IV. References (section 4 of the Administration bill)

Provides that if the Federal Power Commission or Federal Energy Administration are terminated, then references in the Act to those agencies shall be deemed to refer to their successor organizations.



TAX PROPOSALS

I. Residential Conservation (section 1101 of the Administration bill)

A. HOME WEATHERIZATION CREDIT

Present law

No special tax credit or deduction is presently allowed for expenditures for the installation in a taxpayer's residence of insulation, more efficient heating systems, or other energy saving components. However, such expenditures can be added to the taxpayer's basis in a residence which he owns and will decrease any gain on its sale or exchange.

Administration proposal

The credit proposed for qualified residential energy conservation expenditures would be 25 percent of the first \$800 of expenditures and 15 percent of the next \$1,400 of expenditures, for a maximum credit of \$410. No additional credit would be allowed for expenditures over \$2,200. The credit would be allowed for the amounts expended after April 20, 1977, and before January 1, 1985. The maximum credit is the total credit that would be allowed throughout that period with respect to a principal residence. The credits would be nonrefundable, i.e., they could not exceed an individual's tax liability in any year.

Credits would be allowed only for qualified energy conservation expenditures made with respect to the taxpayer's principal residence if the residence is owned by the taxpayer, located in the United States, and in existence on April 20, 1977.

Qualified energy conservation expenditures include those for insulation, a replacement furnace burner designed to reduce fuel consumption through increased combustion efficiency, a device to modify flue openings, an electrical or mechanical furnace ignition system replacing a standing gas pilot light, a storm or thermal window, a clock thermostat, and caulking or weatherstripping of exterior doors and windows (but only if installed together with insulation or one other energy conserving component). Each type of equipment must be new and have a useful life of at least 3 years. The Secretary of the Treasury would be given the power "by rule" to add to or delete from the list of items for which the credit would be allowed. The increase in the taxpayer's basis for his residence for qualifying expenditures would be reduced by the amount of credit allowed.

Action in the 94th Congress

The Ways and Means Committee bill provided for a nonrefundable income tax credit for 30 percent of the first \$500 of insulation expenditures, for a maximum credit of \$150. The credit was to be available for the cost of insulating the taxpayer's principal residence, whether owned or rented. The residence was required to have been in existence on March 17, 1975. The credit was to be allowed for the period March 18, 1975, through December 31, 1977. The limitation on the amount of

qualifying expenditures was to have been reduced by prior expenditures of any taxpayer on the same residence if the credit for those expenditures, whether or not claimed, was allowable.

Qualifying insulation included regular insulation, storm or thermal windows and doors, or similar items such as weatherstripping and caulking designed primarily to reduce heat loss or gain of a building. Whether materials such as a clock thermostat were to qualify was left to administrative determination. A useful life of at least 3 years was required and the materials and equipment had to meet certain performance standards prescribed by the Treasury Department (after consultation with the Federal Energy Administration and the Department of Housing and Urban Development). Used property did not qualify. The increase in basis for qualifying expenditures would have been reduced by the amount of credit allowed.

The Senate Finance Committee adopted a similar provision, except that (1) clock thermostats were specifically made eligible for the credit, (2) the maximum credit would have been increased to 30 percent of the first \$750 of expenditures, or \$225, (3) the credit would have been refundable, (4) the credit would have been available for all residences of the taxpayer, (5) the limitation on the amount of qualifying expenditures would only have been reduced by prior expenditures for which the credit was actually allowed, and (6) the credit would have been allowed for the period July 1, 1976, through December 31, 1978, on homes in existence on May 25, 1976.

Three amendments to this provision were made on the Senate floor. First, the credit was extended to retention head burners, or comparably efficient new burners, and to certain electronic or mechanical ignition devices. Second, the credit was extended to the insulation of furnaces, boilers, ducts, and steam or hot water pipes. Third, clock thermostats were deleted from the definition of insulation terms.

B. SOLAR AND OTHER ENERGY SAVING EQUIPMENT CREDIT

Present law

No special tax credit or deduction is presently allowed for the installation of solar or other energy saving equipment in or on a taxpayer's residence. However, such expenditures can be added to the taxpayer's basis in a residence which he owns and will decrease any gain on its sale or exchange.

Administration proposal

For qualified solar energy expenditures, a taxpayer would be allowed a tax credit of up to \$2,000 in 1977, 1978, and 1979; \$1,580 in 1980 and 1981; and \$1,210 in 1982, 1983, and 1984.

The rates of credit and maximum amount of credit for the applicable time periods are summarized in the table below.

PERCENT OF CREDIT ALLOWED ON EXPENDITURES

	0 to \$1,000	\$1,001 to \$7,400	Maximum credit
Years:			
1977-79	40	25	\$2,000
1980-81	30	20	1,580
1982-84	25	15	1,210

The structure of the credits through these years means that, for qualified solar energy expenditures made through 1979, the taxpayer would be allowed credits of up to \$2,000. The maximum of total credits allowed through 1981 would be \$1,580. If the taxpayer has taken more than \$1,580, but less than \$2,000 in credits before 1980, he would not be allowed any additional credits for solar energy expenditures during 1980 and subsequent years. Similarly, a taxpayer who takes more than \$1,210 in credits before 1982, would not be allowed any additional credits for solar energy expenditures during 1982 and subsequent years. No credit would be allowed for expenditures greater than \$7,400. The credits would be nonrefundable.

Solar energy tax credits would apply to expenditures for installations made after April 20, 1977, and before January 1, 1985, in a dwelling unit located in the United States which is used and owned by the taxpayer as his principal residence at the time. The dwelling unit must have been in existence on April 20, 1977. The credit also would be available for the part of the purchase price of a principal residence attributable to the cost of solar energy equipment. The type of solar energy equipment which qualifies for the credit would be defined in regulations, but the equipment would have to be new, used to cool or heat a building or to heat its hot water, and have a useful life of at least 5 years. The Secretary of the Treasury would be given the power "by rule" to add to or delete from the list of items for which the credit would be allowed. Any increase in the taxpayer's basis for his residence for these expenditures would be reduced by the amount of credit allowed.

Action in the 94th Congress

The Ways and Means Committee bill provided for a nonrefundable tax credit for 40 percent of the first \$1,000 of solar energy equipment expenditures and 20 percent of the second \$1,000, for a maximum credit of \$600. The credit was to be available for the period March 18, 1975, through December 31, 1980, for expenditures for the purchase and installation of solar energy equipment or on existing principal residences and newly constructed principal residences owned by the taxpayers. The amount of expenditures qualifying for the credit was to be reduced by creditable expenditures of prior owners of the residence, even if credits for such expenditures were not claimed. Use of the full allowable amount of credit for one residence would not prevent a taxpayer from claiming the credit for equipment installed on a new principal residence.

Qualifying equipment was to meet definitive performance criteria prescribed by the Secretary of Housing and Urban Development and was to use solar energy to heat or cool the residence or to provide hot water for use within the residence. Used equipment was not to qualify. The increase in basis for qualifying expenditures would have been reduced by the amount of the credit allowed.

An amendment on the House floor changed the credit limitation to 25 percent of the first \$8,000 of expenditures, for a maximum credit of \$2,000. Other floor amendments (1) permitted the solar energy equipment to qualify if it were installed "in connection with" the building, not merely "in or on" it, and (2) permitted the solar energy equipment to qualify if it were to meet "interim" HUD criteria, even if it did not meet "definitive" criteria.

The Senate Finance Committee adopted a similar provision except that (1) the credit was also allowed for geothermal equipment installed in a residence, (2) the rate of credit was to be 40 percent of the first \$1,000 and 25 percent of the next \$6,400 of qualified expenditures for the same maximum credit of \$2,000, (3) the credit was to be refundable, (4) the credit was to be available for all residences (rather than only for principal residences), (5) the dollar limitations used in computing the credit for solar equipment was to also include expenditures by the taxpayer for any residence on heat pumps and geothermal energy equipment, (6) the qualifying expenditures of prior residents were not to be taken into account in determining whether the dollar limitations had been exceeded, (7) the credit was to be available to tenants as well as owners, (8) the credit was not to be allowed if the solar equipment value was included in the valuation of the residence for property tax purposes, and (9) the credit would have been allowed for the period July 1, 1976, through December 31, 1980.

The Senate Finance Committee also provided a refundable tax credit for 20 percent of the first \$1,000 and 12½ percent of the next \$6,400, for a maximum credit of \$1,000, with respect to expenditures on heat pumps installed in any existing residence by the resident. The amount eligible for the credit was to be reduced by previous creditable solar, geothermal, and heat pump expenditures of the same taxpayer on any residence. The increase in basis for qualifying expenditures would have been reduced by the amount of the credit allowed.

A Senate floor amendment restricted the credit to heat pumps which replaced or supplemented existing electrical resistance space heating.

In addition, the Senate provided a refundable income tax credit for the installation of wind-related energy equipment on or in connection with any property used as a residence by the taxpayer. This provision was part of a Finance Committee floor amendment to the Tax Reform Act. Under this amendment, the amount of the credit was to be 40 percent of the first \$1,000 of qualified expenditures, plus 25 percent of the next \$6,400, for a maximum credit of \$2,000. To qualify, the expenses must have been paid by the individual who installed the equipment on property he used as a residence. Thus, an owner or a tenant was to be eligible for the residential wind-related energy equipment credit. A developer or builder was not to be eligible for the credit for residential property, but he might have qualified for a special investment credit for wind-related energy equipment installed with respect to property used in his trade or business.

Under the Senate provision, the amount eligible for the credit for any solar, geothermal, heat pump, or wind-related energy equipment expenditures was to be reduced by previous expenditures for this equipment which was taken into account in determining the credit for a previous taxable year for any residence. The increase in basis for wind-related energy equipment expenditures would have been reduced by the amount of the credit allowed.

Qualified wind-related energy equipment would have included equipment which used wind energy to generate electricity to heat or cool a building or provide hot water for use within the building and which met standard criteria for performances prescribed by the Secretary of Housing and Urban Development. Also, to qualify, the

equipment must have been new property with a useful life of at least three years. The credit was to apply only to equipment which was installed after June 30, 1976, and before January 1, 1981.

II. Fuel Inefficiency Tax and Rebate (sections 1201-1204 of the Administration bill)

Present law

Under the Internal Revenue Code, an excise tax has never been imposed on automobiles or other vehicles for the purpose of encouraging the manufacture of fuel-efficient vehicles. However, until 1971, an ad valorem excise tax was imposed on the manufacturers' sale of automobiles. In addition, a 10-percent excise tax is presently imposed on the sale by manufacturers of buses and of trucks with gross vehicle weight of over 10,000 lbs., and an 8-percent tax is imposed on the sale by manufacturers of parts and accessories for buses and trucks.

The Energy Policy and Conservation Act (Public Law 94-163) provides automobile efficiency standards and civil penalties for automobile fleets which do not meet these standards. The standards are 18 miles per gallon for 1978 model year automobiles, 20 miles per gallon for 1980 model year automobiles, and 27.5 miles per gallon for 1985 model year automobiles.

Present law provides no income tax credit, or other special tax incentive (other than the investment credit, in the case of business property), to aid in the development of electric motor vehicles. However, late in the 94th Congress, Congress appropriated \$160 million to the Energy Research and Development Administration for the development of electric motor vehicles. The appropriation directs production of 2,500 electric cars by December, 1978, and 5,000 electric cars by October, 1984.

Administration proposal

A graduated fuel inefficiency excise tax would be imposed on the sale or initial lease of new automobiles and light-duty trucks whose fuel economy fails to meet fuel economy standards similar to those enacted under the Energy Policy and Conservation Act (Public Law 94-163). These standards, applied separately to each car, are 18 miles per gallon for 1978 model year cars, 19 miles per gallon for 1979 model year cars, 20 miles per gallon for 1980 model year cars, 21.5 miles per gallon for 1981 model year cars, 23 miles per gallon for 1982 model year cars, 24.5 miles per gallon for 1983 model year cars, 26 miles per gallon for 1984 model year cars, and 27.5 miles per gallon for 1985 model year cars. The tax imposable on 1978 model year automobiles would be restricted to passenger automobiles.

In the case of 1978 model year automobiles, the tax would range from \$52 to \$449 for those automobiles failing to meet the standard depending on the degree to which the particular automobile falls short of the standard. For 1981 model year automobiles, the tax would range from \$52 to \$935. For 1985 and later model year automobiles, the tax would range from \$67 to \$2,488.

The exemption from manufacturers excise taxes generally provided with respect to sales to State or local governments and nonprofit educational organizations would not apply to the fuel inefficiency tax.

Graduated rebates would be given with respect to sales or initial leases after May 1, 1977, of new, domestically manufactured automobiles whose fuel economy exceeds the applicable fuel economy standard. The rebate is payable to the manufacturer only if it has passed on the amount of the rebate to the ultimate purchaser of the automobile and has evidence of the payment in its possession. The Secretary of Treasury would adjust the rebate schedule each year in advance so that the total estimated rebate payments would approximate as closely as possible the estimated tax receipts from the fuel inefficiency tax. The adjustment would entail the application of a "rebate coefficient," determined each year, to statutorily established "base rebates." Subject to slight variations from year to year, the approximate range of the rebates is from \$50 (for automobiles exceeding the applicable fuel economy standard by at least 1 mile per gallon) to \$500 (for automobiles exceeding 39 miles per gallon).

Rebates would also be available for vehicles manufactured in Canada. With respect to vehicles manufactured in other countries, rebates would be available on the basis of executive agreements entered into between these countries and the United States. The executive agreements are to be designed so that domestic automobile manufacturers are not disadvantaged vis-a-vis foreign automobile manufacturers under the tax and rebate system.

Purchasers of electric motor vehicles would be entitled to the highest applicable rebate.

For budget accounting purposes, payments of the fuel inefficiency tax would be treated as receipts of the general fund of the Treasury. Fuel inefficiency rebates would be treated as budget outlays which require authorization and appropriation.

Action in the 94th Congress

The Ways and Means Committee bill contained a provision establishing an ad valorem tax on a manufacturer if the average fuel economy of all cars produced by that manufacturer in a given year were to fall below certain mileage standards. The provision was to apply to model years 1978 through 1980. The mileage standards were 18 miles per gallon for model year 1978, 19 miles per gallon for model year 1979, and 20 miles per gallon for model year 1980. The ad valorem tax was imposed only on those cars failing to meet the applicable standard and was equal to a percentage of the manufacturer's sales price, which percentage increased as the mileage of the model fell below the mileage standard. The percentages increased from 2 percent for one mile per gallon less than the standard to 7 percent for 5 or more miles per gallon less than the standard.

The bill did not contain any tax incentives for electric motor vehicles.

On the House floor, an amendment was adopted which provided standards substantially similar to those in the Ways and Means bill, but which provided civil penalties rather than taxes for failure to meet the standards. The bill, as passed by the House, prescribed the following standards for the average fuel economy of all vehicles produced by each manufacturer: 1978, 18.5 miles per gallon; 1979, 19.5 miles per gallon; 1980, 20.5 miles per gallon; 1981-84, to be set by the Secretary of Transportation; 1985 and thereafter, 28 miles per gallon.

A manufacturer was treated as having met the standard for any year if he came within 0.5 mile per gallon of the standard for that year.

The penalty for failure to meet the standard in any year was \$5 per 1/10th mile per gallon that the manufacturer fell short of the standard for that year multiplied by all the automobiles produced by the manufacturer in that year.

A House floor amendment added to the bill an income tax credit of 25 percent of expenditures up to \$3,000, for a maximum credit of \$750, on the purchase of electric highway motor vehicles. The provision was to apply only to purchases of new vehicles made between June 3, 1975, and January 1, 1979, and then only if the purchase was for the personal use of the taxpayer or a member of his family.

The Senate Finance Committee did not adopt the tax on fuel inefficient automobiles because, in the interim, Congress had passed the Energy Policy and Conservation Act (Public Law 94-163) which provided for civil penalties for automobile fleets which did not meet designated automobile efficiency standards. (See "Energy Legislation Originating in Other Committees.")

The Senate Finance Committee also deleted the tax credit for electric motor vehicles.

III. Standby Gasoline Tax and Rebate (sections 1221-1223 of the Administration bill)

Present law

A manufacturers excise tax is presently imposed on gasoline at the rate of 4 cents per gallon and a retailers excise tax of 4 cents a gallon is imposed on special fuels, including diesel fuel and liquefied petroleum gas. These taxes are scheduled to drop to 1½ cents per gallon on October 1, 1979. The net revenues from these taxes go into the Highway Trust Fund except for amounts attributable to noncommercial aviation, which go into the Airport and Airway Trust Fund.

Present law provides exemptions for certain uses of gasoline, including use by State and local governments and nonprofit educational organizations, use in commercial aviation and in vessels, further manufacture, and farming. Nonhighway use is eligible for a 2-cent per gallon refund.

Administration proposal

Starting in 1979, a standby gasoline tax would go into effect if the applicable consumption target were not met. Where domestic gasoline consumption for any fiscal year exceeds the target set for that year by 1 percent or more, a gasoline tax would be imposed, starting on January 1 of the following year, at the rate of 5 cents per gallon multiplied by each full percentage point above the target. The tax could not be increased or decreased more than 5 cents from the tax imposed in the previous year, and the cumulative amount of taxes applicable in any one year could not exceed 50 cents per gallon.

The targets allow for limited annual increases in gasoline consumption, from 7.35 million barrels per day for fiscal year 1978 to 7.45 million barrels per day for fiscal year 1980. From 1980 through 1987, annual reductions are targeted, with consumption decreasing to 7.4 million barrels per day for fiscal year 1981 and further decreasing to 6.5 million barrels per day for fiscal year 1987 and years thereafter.

The existing exemption from manufacturers excise tax generally, provided with respect to sales of gasoline to State or local govern-

ments and nonprofit educational organizations would not apply to the standby gasoline tax.

Funds collected from the standby gasoline tax would be rebated on a per capita basis, the amount of the per capita rebate being based on estimated standby tax revenues. The net revenues from the tax (after taking account of business tax deductions attributable to the tax and administrative costs of the rebate) would be refunded to consumers on a per capita basis. Generally, this refund would take the form of a tax credit. The credit would be refundable for individuals eligible for the earned income credit and for individuals who have earned income and dependent children.

Persons entitled to benefits under the Social Security Act or the Railroad Retirement Act having limited taxable income (so that they were unable to benefit from an income tax credit) would receive per capita energy payments in September of each year, beginning in 1979. Similar payments would be made by States to families receiving aid to dependent children, with full Federal reimbursement of the costs involved. States would also administer a backup program to make energy payments to individuals not receiving reimbursement under any of the other reimbursement systems.

The per capita energy payment would be disregarded in connection with the administration of all Federal or Federally assisted financial aid programs. The rebate would not be considered as income or as a reduction in Federal income taxes for purposes of State law. Also, the rebate would be taken into account for purposes of Federal income tax withholding.¹

Action in the 94th Congress

The Ways and Means Committee bill imposed a gasoline tax of 3 cents per gallon and provided that if gasoline consumption increased over the 1973 level, an additional 5 cents per gallon (with a 20-cent maximum) would go into effect for each one percent by which consumption exceeded the 1973 level. Special exceptions were provided for construction and migrant workers, farmers, charitable, religious and educational organizations, and governmental bodies. A refundable income tax credit equal to the tax on 480 gallons a year was provided to each individual age 16 or over.

The gas tax provision was eliminated on the House floor by a vote of 345-72, and it was not discussed by the Senate Finance Committee.

IV. Other Transportation Proposals

A. MOTORBOAT AND GENERAL AVIATION FUEL (SECTIONS 1231-1235 OF THE ADMINISTRATION BILL)

Present law

Present law imposes a 7-cents-per-gallon excise tax on fuel for aircraft in noncommercial (general) aviation.¹ The net proceeds from this tax² are appropriated to the Airport and Airway Trust Fund.

¹ This rebate program would be combined with the program for the per capita rebates of the crude oil equalization tax. (See "Crude oil equalization tax and rebate.")

² Commercial aviation is not subject to the fuels tax. Users of commercial aviation are subject to taxes on transportation of persons ("ticket taxes") and of property ("waybill tax").

³ In the case of gasoline, this is the sum of a manufacturers tax of 4 cents per gallon and a retailers tax of 3 cents per gallon; in the case of other fuels, this is a retailers tax of 7 cents per gallon.

Exemptions from this tax are provided under present law for farm use, military aircraft and aircraft used in foreign trade, State and local governments, exports, tax-exempt schools, and aircraft museums. Also, the Secretary of the Treasury is authorized to exempt Federal agencies from this tax.

Present law imposes a 2-cents-per-gallon retailers excise tax on a number of fuels³ for motorboats. The net proceeds from the motorboat portion are appropriated to the Highway Trust Fund, but are then transferred from that trust fund to the Land and Water Conservation Fund. Present law also imposes a net 2-cents-per-gallon manufacturers excise tax on gasoline for motorboats, which also is transferred to the Land and Water Conservation Fund via the Highway Trust Fund. The exemptions noted above regarding aircraft fuels also apply to these motorboat fuels.

Administration proposal

The present tax on aviation fuel used in noncommercial aviation of 7 cents per gallon would be increased to 11 cents per gallon, effective October 1, 1977. The additional 4 cents per gallon would not be appropriated to the Airport and Airway Trust Fund.

The present taxes on motorboat fuels of 2 cents per gallon would be increased to 4 cents per gallon for noncommercial uses, effective October 1, 1977. The additional 2 cents per gallon would be transferred to the Land and Water Conservation Fund.

Action in the 94th Congress

None.

B. REPEAL OF EXCISE TAX ON BUSES (SECTION 1241 OF THE ADMINISTRATION BILL)

Present law

Under present law, a 10-percent manufacturers excise tax is imposed on the sale of buses having a gross vehicle weight of more than 10,000 pounds.¹ However, present law provides for an exemption from this tax for "local transit buses"; that is, those "which are to be used predominantly by the purchaser in mass transportation service in urban areas".² The tax also does not apply to school buses for "exclusive" use in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.³

In addition, there is an 8-percent manufacturers excise tax on parts and accessories (other than tires and inner tubes, which are taxed separately) of the type used on buses and trucks.⁴

Administration proposal

The excise tax on buses would be repealed. Floor stocks refunds would be provided in the case of tax-paid buses in dealers' inventories on the day after enactment. Also, consumer refunds would be provided in the case of sales made after April 20, 1977, and on or before the date

³ The fuels are benzol, benzene, naphtha, liquified petroleum gas, casinghead and natural gasoline, and any other liquid fuel (other than kerosene, gas oil, fuel oil, gasoline, or diesel fuel).

¹ This tax is scheduled to drop to 5 percent for sales on or after October 1, 1979.

² This exemption applies to privately-owned local transit buses, since "public" transit buses are exempted under the State-local government exemption provision.

³ This applies to persons purchasing school buses for contract operation to transport school students or employees; school buses sold directly to State-local governments or to nonprofit educational organizations for their exclusive use are exempted already.

⁴ This tax is also scheduled to be reduced to 5 percent on October 1, 1979.

of enactment. The proposed floor stocks refunds and consumer refunds are essentially similar to those provided on past occasions, such as the Revenue Act of 1971, when the manufacturers excise tax was repealed for automobiles and light-duty trucks.

The Administration proposal does not deal with the tax on bus parts.

Action in the 94th Congress

The House version of H.R. 6860 would have repealed the excise tax on intercity buses. This would have been accomplished by expanding the present exemption for buses used in local mass transit operations, to cover all buses "which are to be used predominantly by the purchaser in public passenger transportation service." The present exemption would have been broadened so that it covered buses used by regulated common carrier companies in intercity bus operations. "Predominantly" was defined as use of the bus which is at least 50 percent in "public passenger transportation service." In other words, a bus which is used for charter service for more than 50 percent of its operation would not have been exempted by this provision from the 10-percent excise tax.

The Finance Committee expanded the scope of the House provision to repeal the excise tax on all buses as well as the related tax on bus parts and accessories. The repeal of the excise tax on bus parts would have applied only to parts designed and ordinarily used for buses, as contrasted to parts for trucks.

V. Business Energy Tax Credit (section 1301 of the Administration bill)

A. ADMINISTRATION PROPOSAL

Present law

Under present law, an investment credit of 10 percent (reduced to 7 percent after 1980) is allowed for certain tangible personal property which is placed in service in a trade or business. (The credit could be as high as 11½ percent in cases involving qualified employee stock ownership plans.) However, structural components of buildings, including insulation, storm windows and doors, solar energy equipment, etc., generally do not qualify for the credit. Otherwise eligible property placed in service in hotels and other businesses which cater to transients is eligible for the investment credit, but property placed in service in hotels and apartments which predominantly have permanent residents does not qualify for the credit.

Administration proposal

Generally, business energy property that is now eligible for the investment credit would be allowed a 10-percent tax credit in addition to the investment credit provided under present law. Special business energy property which does not generally qualify for an investment tax credit under present law (primarily structural components, such as insulation, heating and cooling equipment, and solar energy equipment) would receive a tax credit of 10 percent. In the case of cogeneration equipment and certain alternative energy equipment placed in service after 1980, the credit would remain at 20 percent (13 percent additional) even though the regular credit is scheduled to be reduced to 7 percent after 1980. Cogeneration equipment and certain types of alternative energy equipment would be eligible for a 20-percent invest-

ment credit regardless of whether similar property would qualify for an investment credit under present law. These additional or new credits would be available for qualifying energy equipment acquired or constructed by the taxpayer after April 20, 1977, and placed in service before January 1, 1983.

Business energy property includes cogeneration equipment, solar energy equipment, alternative energy equipment and certain other types of business energy equipment which could be made eligible by the Secretary of the Treasury. To qualify as business energy property the equipment must generally be used in a structure completed by April 20, 1977.

Business energy equipment would include insulation, automatic energy control systems and a variety of waste heat recovery equipment which are installed primarily to reduce the amount of energy consumed in carrying on any manufacturing or production process in the same building or structure. This type of equipment would have to be a new identifiable property which would not significantly alter the manufacturing or production process, but merely would perform an existing process in a manner that would use less energy.

Cogeneration equipment means property which could be modified to generate electrical energy in addition to its primary function of producing steam, heat, or other forms of useful energy other than electrical energy which would be used for industrial, commercial, or space heating purposes. This property also would have to meet minimum fuel efficiency requirements prescribed by the Secretary.

Solar energy equipment means equipment which uses solar energy to heat or cool a building to which the equipment is attached, to heat water or to provide heat for a process carried on in the building.

Alternative energy property covers a broad range of equipment that would use or facilitate the use of coal or another fuel as a substitute for petroleum or natural gas or a product derived from petroleum or natural gas. The types of equipment would include boilers, combustors, coal-derived synthetic gas, equipment to manufacture coal-derived chemical feedstocks, coal handling and treatment equipment and pollution control equipment that might be required in connection with the equipment listed above. Certain property that would qualify for the business energy tax credit might also qualify for the coal conversion credit (discussed below) but, under the Administration proposal, the same property could not receive both credits.

If 5-year amortization were elected for pollution control property having a useful life greater than 5 years, only 50 percent of the investment credit would be allowed. Where that equipment is financed through the issuance of tax exempt industrial development bonds, only 25 percent of the investment credit would be allowed.

B. BUSINESS ENERGY CONSERVATION AND CONVERSION INCENTIVES IN THE 94TH CONGRESS

1. INSULATION

Action in the 94th Congress

Under the House bill, the investment credit was made available for insulation installed after March 17, 1975, and before January 1, 1978, if the costs were paid (or accrued) between those dates. The insulation

was required to be installed in a structure existing on March 17, 1975, and which was used on that date in a trade or business.

Qualified insulation included regular insulation and storm (or thermal) windows and doors, and similar items, such as weatherstripping or caulking, designed specifically and primarily to reduce heat gain or loss of a building. The material installed could not be used property, had to have a useful life (to that taxpayer) of at least three years, and meet performance standards that were to be prescribed in Treasury regulations. Insulation in buildings which furnish permanent lodgings, such as hotels and apartments, would also have qualified for the credit.

The Senate Finance Committee adopted a similar provision. The Finance Committee provisions extended the credit through the end of 1978.

2. SOLAR ENERGY EQUIPMENT

Action in the 94th Congress

Under the House bill, the investment credit would have been made available for the cost (including installation) of solar energy equipment installed on business or commercial property after March 17, 1975, and before January 1, 1981, where the equipment was used in a trade or business or as part of a facility for the production of income. To qualify for the credit, the taxpayer's cost for solar energy equipment was to have been paid or accrued before January 1, 1981. Also, the equipment was to have been new in the hands of the taxpayer and had to have a useful life of at least three years. Unlike the investment credit for insulation, this credit would have been available not only for solar energy equipment installed in structures already in existence on March 17, 1975, but also for installations in new structures.

The investment credit under this provision would also have extended to solar energy equipment installed in business properties which furnish permanent lodgings, such as apartments and hotels.

Solar energy equipment was defined as equipment which meets criteria established by the Secretary of Housing and Urban Development and which uses solar energy to heat or cool the building to which it is attached or to provide hot water for use within the building. The credit would not have been available, however, for "back-up" equipment which provides conventional heating or cooling during periods when the solar system is unable to function because of lack of sufficient sunlight.

The House bill also contained a provision which allowed the costs of solar energy equipment to be amortized over a 60-month period. However, businesses were not permitted to claim both rapid amortization and the investment credit for the same solar energy equipment. A business could elect either the investment credit or rapid amortization, but not both.

The Senate Finance Committee bill contained a provision similar to that of the House bill, except that the amount of the credit was to be 20 percent of the cost of equipment paid for or accrued and put into use before 1982 and 10 percent of the cost of pre-1987 material. Exceptions from these time limitations were made in cases of certain binding contracts entered into within the applicable time limitation. (There was no provision for electing rapid amortization instead of the credit.)

An additional 2 percent credit would have been available for taxpayers who established or maintained an employee stock ownership plan (ESOP) to which the employer contributes stock equal in value to 2 percent of the qualified investment in solar equipment. Similar 2 percent additional credits were also provided in connection with the other energy credits under the Senate provisions, including the geothermal credit, the wind-related equipment credit and the credit for qualified energy conversion and conservation equipment, all discussed below.

A Senate floor amendment would have terminated the 20 percent credit after 1979, and would have terminated the 10 percent credit after 1981.

3. GEOTHERMAL EQUIPMENT

Action in the 94th Congress

In addition to the solar energy credit, the Senate Finance Committee adopted a special investment credit for geothermal energy equipment installed on business or commercial property after December 31, 1976. The credit would have been available for equipment which became a structural component of a building and for equipment installed for business properties used predominantly to furnish lodging. The equipment eligible for the credit would have been that which uses geothermal energy to heat or cool a building or to provide hot water for it. Under a Senate floor amendment, the amount of the credit would have been 20 percent for equipment installed before 1980, and 10 percent for equipment installed before 1982.

4. SPECIAL INVESTMENT CREDIT FOR WIND-RELATED ENERGY EQUIPMENT

Action in the 94th Congress

There was no House action in this area.

The Senate would have extended the investment credit to wind-related energy equipment (such as windmills) installed for use in the trade or business of producing electricity or to generate electricity for use in a trade or business. This provision was added as a Finance Committee floor amendment to the Tax Reform Act.

Under the Senate amendment, the amount of the credit was to be 20 percent of the cost of the qualified wind-related energy equipment installed after December 31, 1976, and before January 1, 1980, and 10 percent for equipment installed before January 1, 1982.

5. PORTABLE AIR CONDITIONERS AND HEATING UNITS

Action in the 94th Congress

Under present law, central air conditioning or heating units are generally not eligible for the investment credit to the extent these units are attached to and become part of a building or structure. On the other hand, portable-type and self-contained heating and air-conditioning units which are not permanently attached to a building, such as room air conditioners and space heaters, do generally qualify for the investment credit if used in a trade or business.

The House bill denied the investment credit to portable-type and self-contained heating and air conditioning units. This rule would

have been effective for each unit placed in service after the date of enactment.

The Senate Finance Committee adopted a similar provision.

6. DENIAL OF INVESTMENT CREDIT FOR PETROLEUM-POWERED ELECTRICAL GENERATORS

Action in the 94th Congress

The House bill repealed the investment credit for electrical generating equipment which uses oil or other petroleum products (including natural gas) as its fuel and which is placed in service after April 17, 1975. However, a number of exceptions were provided (similar to those which have been made to suspension or termination of the investment credit in previous years) to deal with situations where the taxpayer may have incurred substantial legal or economic obligations committing it to go forward with construction or acquisition of oil- or gas-fired electrical generating equipment after that date. One exception was made for electrical generating equipment acquired, constructed, reconstructed, or erected pursuant to a contract which was binding on the taxpayer on and at all times after April 17, 1975. A second exception was made under the so-called plant facility rule for facilities under construction or largely paid for under a plan by April 17, 1975. A third exception was made for situations where the taxpayer had on hand on April 17, 1975, over 50 percent of the parts and components for an item of electrical generating property. A fourth exception was made for certain sale-leaseback transactions where a company which intends to use electrical generating equipment (fueled by petroleum) acquires it pursuant to a contract which was binding on it on April 17, 1975, but then sells the equipment to another person and leases back the use of the equipment.

The Senate Finance Committee deleted this provision from the bill.

7. QUALIFIED ENERGY CONVERSION AND CONSERVATION EQUIPMENT

Action in the 94th Congress

Under the House bill, five types of conversion and conservation equipment were afforded special amortization treatment. The five types of equipment were:

(1) Waste conversion equipment to use waste as a fuel, process waste into a fuel, or sort and prepare waste for recycling and recycling equipment.

(2) Shale oil conversion equipment that is necessary to reach, extract and convert shale rock into raw shale oil.

(3) Coal slurry pipelines, including pipelines and needed equipment to transport coal over relatively long distances from the mine to another geographical area where the customer is located or where barges, rail lines, or other facilities for further shipment of the coal are located.

(4) Coal liquefaction and gasification equipment that can be used to process coal into the range of liquids and gases which can be derived from coal: low-Btu gas, high-Btu gas, solvent-refined coal, synthetic crude, crude oils and chemical feedstocks.

(5) Deep mining coal equipment needed to reach underground coal deposits in slope mines, shaft mines or drift mines and to extract the coal and bring it to the surface.

The House bill provided for 5-year amortization for the capital expenditures to acquire or to construct, reconstruct or erect qualified energy conversion and conservation equipment. Amortization of qualified property was to begin, at the taxpayer's election, either with the month following the month in which the property was placed in service or with the beginning of the taxable year immediately following the taxpayer's taxable year in which the property was placed in service. The investment to be amortized under this provision was the depreciated cost (adjusted basis) of the property, reflecting any depreciation allowed (or allowable) prior to the time when the 60-month period became effective. However, no deduction for depreciation (under sec. 167 or sec. 179, relating to an additional first-year depreciation allowance) could be taken for qualified energy use property during a period in which the taxpayer would take rapid amortization deductions under this provision. Also, the property would have been eligible only for a two-thirds investment credit because the 5-year useful life would have had to be used for investment credit purposes.

The Senate Finance Committee made available 2 additional percentage points of investment credit for investment in qualified energy conversion and conservation equipment instead of rapid amortization. The additional credit was to be available for a 10-year period for all the equipment in this group except waste conversion equipment for which the added credit was to be available for 5 years. A Senate floor amendment reduced the time during which the credit was available to 3 years for waste conversion equipment, deep mining coal equipment and shale oil conversion equipment and to 5 years for coal liquefaction and gasification equipment. Coal slurry pipelines were deleted from the bill on the Senate floor.

8. QUALIFIED RAILROAD EQUIPMENT

Present law

As part of the Tax Reform Act of 1976, Congress provided that railroads were to be permitted to expense replacement ties (other than those made of wood). Under prior law, the railroads had generally been required to capitalize such costs and write them off only when the track was replaced or retired. That Act also extended provisions permitting 50 year amortization of railway grading and tunnel bores to property placed in service before 1969. Under prior law, 50 year amortization was available for grading and tunnel bores placed in service after 1968. The cost of older tunnel bores and grading could be written off only if the property was retired or abandoned.

In addition, Congress modified the investment credit limitations with respect to railroads, so that an investment in railroad property through 1978 will entitle the investor to a credit against 100 percent of his tax liability. This limitation will be phased down 10 percentage points a year through 1983 to reach the same 50 percent limitation which applies to most other taxpayers.

Other action in the 94th Congress

In addition to the measures outlined above, Congress considered, but did not enact, provisions for the rapid amortization of railroad rolling stock. Under the tax law, railroad freight cars and locomotives placed in service after 1968 and before 1976 may, at the election of the

taxpayer, be amortized on a straight line basis over 60 months. This provision was enacted for a 5-year period in the Tax Reform Act of 1969 and was extended in 1974 for one more year, through December 31, 1975. The investment credit was not allowed on property for which the 5-year amortization provisions had been elected.

The House bill provided a 5-year amortization period and a two-thirds investment credit for qualified railroad equipment placed in service after 1974 and before 1980. Qualified equipment included railroad rolling stock, classification yards, communications and freight handling equipment, railroad ferries, and leased unit trains.

The Senate Finance Committee adopted a provision which substituted a 12 percent investment credit for the railroad property incentives provided in the House bill. Railroad ferries were not eligible for the credit.

9. RECYCLING

Action in the 94th Congress

A recycling tax credit was in the bill reported by the Ways and Means Committee but was deleted from the bill by a floor amendment.

As reported by the committee, the bill contained a recycling tax credit aimed at encouraging recycling activity and investment in capital equipment used for recycling. The credit would accrue on the purchase of recyclable postconsumer solid waste materials¹ at the same rate as the credit for investment in personal property. The accrued credits could be applied against the recycler's tax liability, up to 15 percent of the cost of investment in recycling equipment placed in service, in addition to the 10-percent investment tax credit available generally to all business taxpayers. Credits on purchases of recyclable materials could be accrued through December 31, 1980, and applied to the cost of recycling equipment through December 31, 1983.

The credit on the purchase price would phase out if the price of the recyclable materials exceeded two times the base period price (adjusted for changes in the cost of living since the base period). No credits would be accrued if the purchase price became more than three times the adjusted base period price.² The phase out of the credit was included because higher prices provide sufficient incentive for suppliers, in contrast with periods of low prices when some suppliers may not be able to cover their costs.

When a taxpayer would apply these accrued credits against his tax liability, he could use them up to 15 percent of the purchase price of the equipment, which when added to the regular investment tax credit would provide a 25 percent tax credit. This 15 percent credit would be subject to the limitation relating to total tax liability, but not the limit to 50 percent of tax liability above the first \$25,000 under the regular investment tax credit.

In addition to the recycling credit, the House bill provided five-year amortization and eligibility for a two-thirds investment credit

¹ Defined as glass, paper, textiles, nonferrous metals (other than precious metals and other than copper base scrap), and ferrous metals.

² For these purposes, the base period price would have been the average of the appropriate prices during 1971 through 1973. The Bureau of Labor Statistics would establish the appropriate price index for each recyclable material, and it would adjust the base period price for changes in the cost of living. As the price index for a recyclable material rises above 200 percent of the base period average, the credit earned on purchases would be reduced by an equal percentage. For example, if the index were 250, the credit would be reduced by 50 percent; if the index were 300, there would be no credit on such purchases.

for equipment that may be used to sort and prepare solid waste for recycling or used for recycling solid waste.

The Finance Committee approved a recycling credit based on purchases of recycling materials above a base period level. The full Senate substituted and passed (as an amendment to a bill later enacted) a requirement for a six-month study of the need for recycling incentives to be prepared jointly by Treasury and EPA.

10. RAPID AMORTIZATION OF POLLUTION-CONTROL EQUIPMENT

Prior law

Five-year amortization was initially made available to a taxpayer at his election for pollution control equipment that was placed in service after 1968 in a plant or other property that was in existence before 1969. The election was available for equipment placed in service before January 1, 1976, at which time the provision expired. The provision was enacted as a special incentive for the installation of pollution control equipment in the Tax Reform Act of 1969, because that Act repealed the investment tax credit.

Rapid amortization was available for the installation of certified pollution control equipment with a useful life of up to 15 years. For equipment with a useful life greater than 15 years, the basis attributable to the first 15 years could be amortized over a 5-year period, and the remaining years could be depreciated under the regular rules for depreciation, including use of one of the several alternative methods of accelerated depreciation. Property that was eligible for rapid amortization was not made eligible for the investment tax credit when it was re-enacted in 1971.

In order to be eligible for rapid amortization, the pollution control equipment had to be certified as a new, identifiable treatment facility to be used in an existing plant to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes or heat. Certification was required by appropriate State and Federal authorities that the equipment complied with the appropriate standards.

In addition to the rapid amortization provision that had been in effect through 1975, taxpayers who placed pollution control equipment in service might be able to finance the cost of acquisition, in whole or in part, through the issue of industrial development bonds. Several conditions and limitations apply to the issue of these bonds in section 103 of the Code, and all taxpayers may not be able to qualify to issue these tax-exempt bonds. Under the Revenue Act of 1971, taxpayers who did not elect rapid amortization were able to use accelerated depreciation on ADR guideline lives and the investment credit. In many cases, this combination gave greater tax benefits than five-year amortization.

Action in the 94th Congress

In the Tax Reform Act of 1976 the Congress restored five-year amortization for pollution control facilities as a permanent provision. The provision applies to a new identifiable, certified pollution control facility installed in a plant in operation before January 1, 1976. The Act amended the prior law definition to cover pollution control equipment that prevents the creation of pollutants, as well as their emission,

which formerly had been the limit of the provision. In addition, the Act provided that a facility or equipment for which the taxpayer elects five-year amortization will be eligible for a one-half investment tax credit. The limited investment credit will not be allowed, however, where the useful life of the facility or equipment would be less than 5 years, as the useful life would be determined without regard to this amortization provision.

Restoration of the election for five-year amortization was effective with respect to certified pollution control equipment placed in service after December 31, 1975. The investment credit will generally be available for such equipment placed in service after December 31, 1976.

VI. Crude Oil Equalization Tax and Rebate (sections 1401-1409 of the Administration bill)

Present law

Under present law, the price of domestically produced crude oil is regulated by the FEA in accordance with the "Emergency Petroleum Allocation Act of 1973," as amended. Under these rules, all domestic oil production other than stripper oil (oil produced from fields where the average daily production is 10 barrels or less) is subject to price controls. The exact nature of the price controls is determined administratively, but there is a legislatively mandated limit on the average price of the nonstripper oil. In 1977, the average price limit is \$8.40 per barrel. This is subject to an inflation adjustment which may not exceed 10 percent a year. Under present law, these controls are mandatory through May 1979, and there is discretionary authority in the President to continue controls until September 1981.

Under the existing regulations, "old oil" is the amount of oil produced on a property up to either 1972 production or 1975 production, whichever is less. "New oil" is oil produced on a property in excess of this amount. Old oil is controlled at a price averaging about \$5.17 per barrel, and new oil is controlled at a price averaging about \$11.64 a barrel. (The price of any particular barrel of oil may vary by several dollars from these averages depending on the quality of the oil and its location.)

Under the present law, there is an entitlements program which is designed to equalize the cost of crude oil to refineries in the United States, regardless of their actual mix of price-controlled and uncontrolled oil. Those U.S. refineries using more than the national average percentage of price-controlled crude oil must buy entitlements from refineries using less than the national average. This purchase and sale of entitlements among refiners offsets the advantages that would otherwise result for the refiners with access to a disproportionate amount of price-controlled crude oil. The FEA sets the price of entitlements each month based on price differences between controlled and uncontrolled oil. Small refiners receive certain advantages under the entitlements program.

Administration proposal

Oil taxes.—Under the Administration proposal, domestic oil production would be subject to a "crude oil equalization tax" which would be imposed in three stages. During the first stage (calendar 1978), a tax of \$3.50 per barrel would be imposed on all "first tier"

crude oil, which is now controlled at an average price of about \$5.17 per barrel. First tier crude oil as defined under current price control regulations is generally "old oil", that is, oil produced on a property which is not in excess of the amount produced during a 1972 or 1975 base period (whichever is lower).

During the second stage (calendar 1979), the tax would equal the average difference in refiner acquisition cost per barrel between all first tier oil and all second tier crude oil produced in the United States. Second tier crude oil is oil produced on a property in excess of base period production and is now controlled at price averaging \$11.64 per barrel. During the third stage (1980 and thereafter), the tax would apply to both first and second tier oil and would equal the difference between the average refiner acquisition cost of each class of oil and the then current refiner acquisition cost of imported oil. However, the President would be given authority to suspend increases in the tax where he found that the world price of oil was rising at a rate substantially in excess of the general inflation rate.

Once the tax is fully in effect, the entitlements program would be terminated.

Oil rebates.—A special rebate would be provided in the case of home heating oil. This rebate would be payable to retailers of home heating oil who could demonstrate that the amount of the rebate had been fully passed through to consumers in the form of lower prices.

All other net revenues from the tax (after taking account of business tax deductions attributable to the tax and administrative costs of the rebate) would be refunded to every consumer on an equal per capita basis. Generally this refund would take the form of an income tax credit. The credit would be refundable for individuals eligible for the earned income credit and for individuals having earned income who have dependent children.

Persons entitled to benefits under the Social Security Act or the Railroad Retirement Act having limited taxable income (so that they were unable to benefit from an income credit) would receive per capita energy payments in September of each year, beginning in 1979. Similar payments would be made by States to families receiving aid to dependent children with full Federal reimbursement of the costs involved. States would also administer a backup program to make energy payments to individuals not receiving reimbursement under any of the other prescribed reimbursement systems.

The per capita energy payment would be disregarded in connection with the administration of all Federal or Federally assisted financial aid programs. The rebate would not be considered as income or as a reduction in Federal income taxes for purposes of State law. Also, the rebate would be taken into account for purposes of Federal income tax withholding.¹

Oil pricing (proposed administrative action).—Under the Administration proposal, the prices of old oil and what is now new oil would continue to be controlled at current price levels, adjusted only for inflation. These price controls would be permanent as contrasted with the existing price controls which are scheduled to expire in May 1979. There would be a higher price for "new new oil," which is oil discovered after April 20, 1977, in a well that is either more than 2½ miles

¹ If the standby gasoline tax goes into effect, rebates of the gasoline tax and the crude oil equalization tax would be combined into one program.

from an existing onshore well or more than a thousand feet deeper than any well within the 2½-mile radius, as well as oil from an offshore lease entered into after April 20, 1977. New new oil would be priced after 3 years at the current world price of about \$13.50 a barrel adjusted upward for inflation.

Stripper wells would remain free of price controls. Alaskan oil from existing fields would be treated as new oil at the wellhead (controlled at \$11.64 per barrel on the average), and "new new" Alaskan oil would be entitled to receive the 1977 world price. Shale oil would not be subject to price controls and would receive the current world price as in effect from time to time.

Action in prior Congresses

Since 1974, both tax writing committees have agreed to tax bills including a windfall profits tax on crude oil, natural gas liquids, or both.

Essentially a windfall profits tax on oil is an excise tax designed to tax away all or part of the difference between the controlled price of oil and the high world price of oil which is artificially affected by the actions of OPEC. The cost of oil to the consumer rises but the "windfall" to the producer because of this increase is reduced or eliminated by the windfall tax.

In past Congresses, windfall profits tax proposals have assumed that the price of domestically produced crude oil would be decontrolled, and that a tax would be imposed on the producer equal to a substantial part of the difference between the controlled price and the world price of oil. However, the combination of maintaining price controls on domestic production and imposing an excise tax on that domestic production making it cost equivalent to imported oil essentially achieves the same effect (as under the Administration proposal, discussed above).

In 1974, the Ways and Means Committee reported H.R. 17488, which included a windfall profits tax on crude oil. That bill was not taken up on the House floor.

At the time of the Committee's action, about two-thirds of United States' oil production was subject to price controls at prices averaging about \$5.25 per barrel. The remaining production was uncontrolled and was selling at much higher prices. The windfall profits tax reported by the Committee was an excise tax in which the tax rate for a particular barrel of oil depended on the difference between the selling price of that barrel, over a base price. The base price was the selling price of oil of similar grade, quality and location determined as of May 1973, before the price of oil was artificially affected by the OPEC cartel. This base price averaged \$4.75 per barrel. The tax rate ranged from 10 percent of the first 25 cents by which the selling price exceeded the base price of 85 percent of the excess over \$2.00. Thus, there was a very modest tax on price controlled oil but a sizable tax on uncontrolled oil.

The tax phased out over a 5-year period. Also, it contained a "plowback" provision under which producers could receive a credit against the windfall profits tax for 100 percent of qualifying investment above a threshold level. Except for the first year of the tax, the plowback credit could have completely removed all windfall profits tax liability.

In 1975, during the course of the markup on H.R. 6860, the Ways and Means Committee considered the possibility of including a windfall profits tax on oil and/or natural gas. This tax would have been

contingent on price decontrol. However, the windfall provision was not included as part of the reported bill.

In August of 1975, the Finance Committee agreed to a deregulation profits tax, which would have applied to oil and natural gas liquids and was to have been added as a Finance Committee floor amendment to a tariff bill. This deregulation tax was conditioned on price decontrol, and the measure died when proposals then pending for rapid or immediate decontrol of energy prices failed to win approval.

The Finance Committee's windfall profits tax was similar in many respects to the 1974 Ways and Means Committee's tax. The Finance Committee tax, however, applied largely to deregulated oil; that is, oil that had been subject to price controls but for which controls had been removed. (In fact, controls were not removed.) In addition, there was a modest tax on previously uncontrolled oil. The tax was phased out over a 5½-year period. There was a plowback credit, but it was limited to 25 percent of the tax otherwise due.

VII. Industrial Use of Oil and Natural Gas (sections 1501-1503 of the Administration bill)

Present law

Under present law, natural gas prices for gas which is sold in interstate commerce are regulated by the Federal Power Commission. Gas which is sold intrastate is not subject to price control.

Historically, the price of natural gas sold in interstate commerce was controlled at levels ranging from about 14 cents per thousand cubic feet ("mcf") to 34 cents per mcf, depending on the area of the country where the gas was produced and sold. Thus, all interstate gas was sold at levels substantially below those prices charged for an equivalent amount of energy in the form of oil (even in periods when oil prices were far below current levels). Beginning in 1974, prices for gas which is newly committed to interstate commerce have been standardized on a national basis and have increased substantially to the point where gas newly dedicated to interstate commerce is now selling at a rate of approximately \$1.45 per thousand cubic feet. Even this price makes interstate gas relatively cheap as compared to other fuels. However, much gas is selling at prices below this rate under old contracts which were entered before the recent round of price increases.

The FPC has authority to permit "spot sales" of interstate gas at higher than controlled prices during limited periods of emergency. In addition, in The Emergency Natural Gas Act of 1977, Congress authorized the President to permit sales of gas at uncontrolled prices to prevent local natural gas emergencies, but this authority expires July 1, 1977, unless it is further extended.

The price paid by consumers for natural gas which is delivered to their homes and businesses is regulated at the State level by public utility commissions. Generally pricing policies favor bulk industrial users of natural gas. However, these customers are usually "interruptible", which means that in time of shortage, their gas is shut off first.

Administration proposal

Tax on industrial use of oil and natural gas.—Under the Administration proposal, a tax would be imposed on industrial and utility use of oil and natural gas.

In the case of petroleum, industrial users would be subject to a tax of \$.90 per barrel beginning in 1979. The tax rises gradually to a level of \$3.00 per barrel for 1985 and later years.¹

Electric utilities would be subject to a flat tax of \$1.50 per barrel beginning in 1983.

In the case of natural gas, a tax is imposed which—when fully phased in—would have the effect of making natural gas cost equivalent per BTU to the cost of distillate oil (not including the oil users tax). For industrial users the tax would first be imposed in 1979. For that year the tax, when added to the user's cost of the natural gas, would bring the total effective cost to a level \$1.05 per million BTUs (i.e., per thousand cubic feet or "mcf" of natural gas) below the price of the same amount of energy in the form of oil. This effective cost differential would gradually decrease (the tax would rise) so that by 1985 oil and natural gas would be cost equivalent for industrial users (except for the petroleum users tax).

A similar tax would be imposed on electric utilities, except that the tax would first be imposed in 1983. Here the initial tax would bring the utilities cost to a level of \$.50 per mcf below the BTU equivalent price of oil and would be fully phased in by 1988.

Certain limited quantities of oil and natural gas would not be subject to tax. (This exemption would be phased out, however, so that large consumers would receive no exemption.) The taxes would be subject to an inflation adjustment.

Certain uses would be exempt from the taxes, including fertilizer manufacturer, farming, aircraft, rail and water transportation use, and certain limited manufacturing, refining and reprocessing uses. Gasoline and diesel fuel would also be exempt.

Coal conversion credit.—Industrial users of oil and natural gas would be allowed a credit against their users tax liability for the year for investments made after December 31, 1977, in "alternative energy property." Alternative energy property would include coal fired boilers, or other boilers whose primary fuel was not oil or natural gas, facilities for converting coal into natural gas, other coal conversion equipment, including equipment relating to the processing and handling of coal, and pollution control equipment relating to coal. Excess investment could be carried forward and credited against tax liability for future years.

Utilities would be entitled to a similar credit for investment relating to conversion to the use of coal. However, utilities would be entitled to credit for all such investments made after April 20, 1977.

Certain property which is eligible for the coal conversion credit might also qualify for the proposed business energy tax credit but, under the Administration proposal, the same property could not receive both credits.

Natural gas pricing (sections 401–416 of the Administration bill).—The present interstate-intrastate distinction for price controls would be eliminated for all new contracts, with gas selling under existing intrastate contracts would not be brought under controls as those contracts expire.

¹ Under the Administration's bill, the tax would actually be imposed on a basis of the BTU content of the oil or natural gas. Natural gas contains about one million BTU per thousand cubic feet; oil, on the average, contains about 5.8 million BTU per barrel.

Under the proposal, new gas (that is, gas found more than two and a half miles, or more than 1,000 feet deeper than gas from any producing well in existence on April 20, 1977, or from an offshore lease entered after that date) would be entitled to receive the BTU equivalent price of domestic crude oil, determined on a nationally weighted average refiner acquisition basis. This would be about \$1.75 per thousand cubic feet at the beginning of 1978. Intrastate gas made available on the interstate market at the expiration of existing contracts would also be eligible for the \$1.75 price.

Old interstate gas sold under existing contracts would continue to be regulated at current levels (subject to inflation adjustments) and subject to high-incentive pricing for specific categories of high-cost gas. Gas made available from old interstate reservoirs at the expiration of existing interstate contracts would be regulated at a price not to exceed \$1.45 per mcf, subject to an inflation adjustment.

High-cost gas would be allocated to industrial users.

Federal jurisdiction would be applied to synthetic natural gas facilities to guarantee them a reasonable rate of return.

The Emergency Natural Gas Act of 1977 would be extended for three years to authorize the President to allocate scarce supplies of gas.

Action in the 94th Congress

The House bill imposed an excise tax on oil and natural gas used in business as a fuel. The tax on oil would have been phased in between 1977 and 1982 and would have reached \$1 per barrel. The tax on natural gas would have been phased in between 1977 and 1980 and would have reached 18 cents per thousand cubic feet.

Exemptions were provided for use in a vehicle, vessel or aircraft, residential facilities, on farms, and, until 1982, for use in existing electrical generating facilities. Use by tax-exempt organizations was also exempted.

The Administrator of the FEA was to report to Congress identifying (1) the industries or industrial processes for which there is no economically feasible alternative to the use of petroleum or petroleum products, (2) areas where conversion to other fuels is not feasible because of Federal, State, or local laws on pollution, and (3) other uses which he believes should be exempted from this tax for other reasons.

On the House floor, additional exemptions for the textile and glass manufacturing industries were added.

The Finance Committee approved the provision during markup sessions after adding four more exemptions, but it did not include the provision in any reported bill.

The following is the tax schedule agreed to by both committees:

	Tax per barrel of oil	Tax per thousand cubic feet
Year of use:		
1977.....	\$0.17	\$0.04
1978.....	.33	.08
1979.....	.50	.12
1980.....	.67	.18
1981.....	.83	.18
1982 and thereafter.....	1.00	.18

VIII. Energy Development Tax Incentives

A. GEOTHERMAL TAX INCENTIVE (SECTIONS 1601, 1602 AND 1604 OF THE ADMINISTRATION BILL)

Present law

Present law is unsettled as to whether either a depletion deduction or the intangible drilling cost deduction is allowable for the production of geothermal steam and associated geothermal resources. (The issue is whether geothermal steam constitutes a "gas" within the meaning of the provisions allowing depletion and the deduction of intangibles.) Although the Ninth Circuit Court of Appeals held that these deductions were available, the Internal Revenue Service is apparently not following that decision in cases arising outside of the Ninth Circuit.

Administration proposal

Intangible drilling cost deductions would be allowed in the case of wells drilled for geothermal steam and geothermal resources to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells. The deduction would be allowed for wells commenced after April 20, 1977.

Gain on the disposition of geothermal properties would be recaptured (that is, treated as ordinary income rather than capital gain) to the extent that such gain does not exceed the amount by which the intangible drilling cost deductions exceed the amount of such deductions which would have been allowable had the costs been capitalized and amortized over 120 months.

The excess of intangible drilling cost deductions for geothermal wells over the income from interests in geothermal wells would be included in the minimum tax base.

Action in the 94th Congress

The Ways and Means Committee bill contained no provision concerning the intangible drilling cost or depletion deductions for geothermal steam production.

The Finance Committee provision would have allowed current expensing of intangible drilling costs for wells drilled for geothermal steam and associated geothermal resources. The bill also would have provided a deduction (in the nature of, but in lieu of, a depletion deduction) for 22 percent of the gross income from the property for the production of geothermal steam and associated geothermal resources, but not to exceed 50 percent of taxable income from this property. This deduction would have been considered a tax preference for purposes of the minimum tax.

B. MINIMUM TAX TREATMENT OF INTANGIBLE DRILLING COSTS (SECTION 1603 OF THE ADMINISTRATION BILL)

Present law

Under present law, the operator of an oil or gas well may elect to deduct the intangible drilling and development costs as an expense rather than capitalize the costs and recover them through depletion or depreciation deductions. In the 94th Congress, under the Tax Reform Act of 1976, deductions for intangible drilling costs in excess of

the amortization which would have been allowed on the basis of a 10-year life are treated as a tax preference for purposes of the minimum tax. Generally, intangible drilling and development costs are defined, in the case of oil and gas wells, as those expenditures made by the owner of the operating interest for wages, fuel, repairs, hauling, supplies, etc., incurred in preparing a drill site, drilling and cleaning a well, and constructing assets which are necessary in drilling the well and preparing it for production (such as derricks, pipelines, and tanks).

In the Tax Reduction and Simplification Act of 1977, the Congress provided that for taxable years beginning in 1977 only those intangible drilling costs in excess of oil and gas production income would constitute a tax preference. However, this rule would not apply for future years unless there is further Congressional action.

Administration proposal

Intangible drilling cost deductions for oil and gas wells would be included in the minimum tax base of individuals only to the extent such deductions exceeded the taxpayer's income from oil and gas properties.

PROVISIONS CONSIDERED IN THE 94TH CONGRESS BUT NOT INCLUDED IN THE ADMINISTRATION PROPOSALS

I. Import Controls

A. IMPORT QUOTAS AND LICENSES

Present law

At present there are no quotas imposed on the importation of petroleum or petroleum products. However, if the Secretary of the Treasury determines that imports of petroleum or petroleum products threaten to impair the national security, the President is authorized to adjust the imports by such measures as quotas or duties.¹

Administration proposal

The Administration proposal does not contain any provisions regarding the imposition of quotas on the importation of oil.

Action in the 94th Congress

The House bill imposed restrictions on the quantity of petroleum and petroleum products which could be imported into the United States. The levels of the quotas were based on estimates of energy need, available resources, and conservation savings resulting from the bill, as well as from voluntary efforts.

Beginning with the establishment of an import licensing system in 1975, a maximum limit would have been placed on the average daily number of barrels of petroleum and petroleum products which could be imported in each calendar year. The maximum average daily number of barrels (in millions) was:

1975	-----	6.0
1976	-----	6.0
1977	-----	6.5
1978	-----	6.0
1979	-----	6.0
1980 and thereafter	-----	6.5

The President could have varied the average daily quantity of oil which could be imported if he determined that the variations served the national interest.

The bill also provided limited exceptions to the quota restrictions. For 1975 and the first 2 calendar years of the restrictions, 1976 and 1977, the quotas were to allow the importation of distillate fuel oil and residual fuel oil in an amount equal to an average of 2 million barrels per day. Of this 2 million barrels per day allowance, distillate

¹ Section 232(b) of the Trade Expansion Act of 1962, Public Law 87-794 (as amended), provides that if the Secretary of the Treasury determines that imports of an article "threaten to impair the national security," the President may adjust imports of that article. Before 1973, this Executive authority over oil imports was exercised by imposing quotas. In 1973, President Nixon switched from adjustment of oil imports through quotas to adjustment through the imposition of monetary exactions called import license fees. This license fee system, which continues today, was upheld as within the President's authority to adjust imports in *Federal Energy Administration v. Algonquin SNG, Inc.*, decided by the Supreme Court on June 17, 1976.

fuel oil imports could constitute a maximum of 400,000 barrels per day. This separate allowance included only distillate and residual fuels used primarily for heating buildings and generating electricity; oil imported under this allowance could not be used as motor vehicle fuel.

Imports of petroleum and petroleum products when imported for use in the production of manmade products (such as nitrogen fertilizer, farm chemicals, paints, plastics, synthetic fibers, synthetic rubber, pharmaceuticals) and similar manmade products manufactured from petrochemical feedstocks were not to be counted against the import quota.

Any oil imported for storage in a strategic reserve provided for by law was also exempt from the quota restrictions.

The bill also required the President to divide the quantitative restrictions among the various types of petroleum and petroleum products where divisions were necessary to avoid serious adverse effects on the economic and health needs of industries and geographical areas.

The House bill also established an import licensing system for distributing rights to import petroleum and petroleum products. Rights to import petroleum and petroleum products (i.e., import licenses) were to be distributed by sealed bidding in public auctions and the licenses were to be fully transferable in the open market.

The bill also provided a second, separate import license auction system for small refiners and independent marketers. However, in order to avoid the speculation possible in a two-level market, the separate import licenses could not be resold except to the Deputy Administrator for Petroleum Import Licensing, under the circumstances and to the extent provided in regulations prescribed by him.

To participate in the separate import license program, a small refiner's total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with the refiner) could not exceed 50,000 barrels per day. To qualify as an independent marketer, a person had to be engaged in the marketing or distribution of refined petroleum products and could not be a refiner nor a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract).

The bill created an Office of Petroleum Import Licensing within the Federal Energy Administration. An FEA Deputy Administrator was to head the Office and administer the program established by the bill.

This provision was not to have any operational impact, nor to change in any way the status of these refiners under the United States customs laws. The products of these refiners imported into the United States were still to be subject to both the quotas and duties.

These provisions were not acted on by the Senate Finance Committee.

B. IMPORT DUTIES

Present law

Under present law, import duties are imposed on all petroleum and petroleum products imported into the United States. These duties vary according to the grade of petroleum or type of product. For example, imported crude oil is currently subject to duties of 5¢ or 10¢ per barrel according to the gravity of the oil. This duty reduces the amount of

import license fees administered by the Federal Energy Administration.

Under the President's national security authority (Trade Expansion Act of 1962), specific import license fees of 21 cents and 63 cents are presently imposed on each barrel of imported petroleum or petroleum products, respectively. The President has discretion to raise or lower these fees.

Administration proposal

The Administration proposal does not contain any provisions regarding import duties.

Action in 94th Congress

The House bill replaced the present system of specific duties on imports of petroleum and petroleum products with a system of ad valorem duties. It also limited the President's authority to increase or decrease these duties.

The ad valorem rates of duty applying to imports of petroleum and petroleum products provided in the bill were to be assessed by the U.S. Customs Service under valuation standards set forth in sections 402 and 402a of the Tariff Act of 1930, as appropriate. In general, the value for these purposes is the value of the article at the foreign port of exportation.

The bill imposed a 2-percent ad valorem duty on crude petroleum, and a 5-percent ad valorem duty on certain petroleum products. These rates of duty replaced the specific import duties, fees, etc.

The President could adjust the rates of duty established by the bill whenever he found such adjustments necessary to carry out the purposes of this bill, in the light of overall considerations of the national interest. However, the bill limited the presidential adjustments, so that no rate of duty could exceed 10 percent ad valorem or \$1 a barrel (whichever was greater), nor fall below 2 percent ad valorem.

One further limitation on the President's authority to adjust the rate provided that for 2 years after the date of enactment, the President could make no adjustment which resulted in a rate of duty of more than 5 percent ad valorem on any distillate fuel oil or residual oil imported for use as fuel, other than in the propulsion of motor vehicles.

The President was to proclaim all adjustments to the rate of duties on oil imports. Any adjustment increasing duties was to be set forth in a document and transmitted by the President to both Houses of Congress, on the same day, while they were in session. Adjustments could take effect no sooner than the close of the sixtieth day after the date of delivery of the document containing the adjustment to the Congress.

The bill expressly nullified any presidential adjustment of imports of petroleum and petroleum products under authority granted him under the Trade Expansion Act of 1962 (sec. 232(b)), effective 60 days after the date of enactment of the bill. This is the same time interval allowed before the President could increase the duty to 10 percent.

An exception to the restrictions on presidential discretion was made for military or defense emergencies involving actual hostilities. The President would have continued to have the full discretion which he has under present law to adjust imports of petroleum and petroleum products during a period in which the Congress declares war, the

United States armed forces are introduced into hostilities pursuant to statutory authorization, a national emergency is created by attack upon the United States, or the United States armed forces are introduced into hostilities under circumstances which require a report by the President under the War Powers Resolution (sec. 4(a)).

The bill also provided that where, under the Trade Expansion Act of 1962 (sec. 232(b)), increases in duties had already been made, these duties were to cease to be effective 60 days after enactment of the bill. The rates of duty provided in the Tariff Schedules of the United States were to be replaced by the rates of duty imposed by the bill. The bill further restricted presidential discretion with regard to oil imports by barring any adjustments of oil import duties under authority granted the President by the Trade Act of 1974. Finally, the President could not grant to petroleum or petroleum products from developing countries the duty-free treatment which the Trade Act of 1974 would have allowed the President to provide under appropriate domestic and foreign development conditions.

These provisions were not acted upon by the Senate Finance Committee.

C. OIL SWAPS

Present law

Under present law, domestic United States oil may not be exported except in two limited circumstances established by the Transalaska Oil Pipeline Act.¹ In the first case, oil may be exported to a foreign state adjacent to the United States as part of an exchange or in order to increase the efficiency of the transportation of oil. The second exception applies to oil exports to any other foreign country and requires express Presidential findings that the exports will not decrease the total quantity or quality of oil available in the U.S., that the exports are in accordance with standards set by the Export Administration Act of 1969,² and that the exports are in the national interest. The Congress may veto an Executive finding by concurrent resolution within 60 days of its issuance. Under present law, import duties are imposed on all petroleum and petroleum products imported into the United States, regardless of the import arrangement involved.

Administration proposal

The Administration proposal does not contain any provisions regarding oil swaps.

Action in the 94th Congress

In 1976, the Senate Finance Committee adopted an amendment to the Tax Reform Act of 1976 to provide duty-free treatment of oil imported from Canada under company-to-company oil swap arrangements made pursuant to agreement between the governments of the United States and Canada. The Finance Committee believed that the provision would help protect refiners in the Northern Tier States who depend on supplies from Canada which has adopted a policy of reducing its exports to the United States.

Under the Senate provision, the United States tariff schedules were to be modified to exempt oil imported from Canada into the United States from the import duties set forth in Schedule 4, part 10 of such

¹ Public Law 93-153.

² Although the 1969 act has expired, the regulations promulgated under it are still being invoked by the Department of Commerce under the Trading With the Enemy Act.

schedules, if the oil was imported as part of an oil swap arrangement. The types of petroleum eligible for such swaps were crude petroleum, including reconstituted crude petroleum, and crude shale oil. The quantity of imported Canadian oil exempted from U.S. duties had to be equivalent in amount, kind and quantity to the oil which was imported by Canada from United States refiners during the 30-day period preceding the date of entry of the Canadian oil into the United States.

The amount of Canadian oil entering the United States duty-free could not be offset against any merchandise except the oil exported by United States refiners to Canada. In order for the Canadian oil to qualify for duty-free entry, the oil exported by United States refiners under the swaps was required to be either domestic United States oil or oil from foreign sources on which United States refiners had already paid the United States import duties.

II. Miscellaneous Provisions

A. REPEAL OF EXCISE TAX ON REREFINED LUBRICATING OIL

Present law

Present law imposes a 6-cent-per-gallon manufacturers excise tax on the sale of lubricating oil (other than cutting oils) in the United States. Sales to a manufacturer or producer of lubricating oils for resale are exempt. The cleaning, renovating, or refining of old oil is itself not considered to be manufacturing, and as a result the sale of rerefined oil by the rerefiner does not result in a tax.

A refund or credit of the tax is authorized in the case of lubricating oil used otherwise than in a highway motor vehicle. The refund or credit is not allowed, however, for cutting oils, previously used oil, or other oil which was exempt from the excise tax. Present law also provides that if a person uses an article that he has manufactured, produced, or imported, he is generally liable for the manufacturers tax in the same manner as if he had sold the article, unless he uses the article in the manufacture of products that are themselves subject to the manufacturers excise tax. As a result, a manufacturer of lubricating oil may be liable for the manufacturer's excise tax of 6 cents per gallon if he himself uses the oil rather than sells it.

The Internal Revenue Service has ruled (Rev. Rul. 68-108, 1968-1 C.B. 561) that if a person uses new lubricating oil off the highway (e.g., in railroad lubricating activities), he is entitled to a full refund of the manufacturer's tax. (In fact, the railroad may purchase it tax-free pursuant to a registration system.) However, if a person mixes waste or rerefined oil with new lubricating oil, then the new lubricating oil portion of the mixture is taxable. Also, the railroad or other ultimate user of the mixture for nonhighway purposes is not permitted to obtain a refund of the tax paid on the new portion of the oil mixture that is so used.

Under the Energy Policy and Conservation Act (P.L. 94-163), various agencies of the Federal Government are instructed to promote the use of recycled oil (defined for this purpose as "rerefined or processed used" oil). This is to be done primarily by testing recycled oil to determine those end uses for which it is substantially equivalent in performance to new oil; and by requiring changes to the existing Federal

rules which pertain to the labeling of recycled oil so that recycled oil which is substantially equivalent to new oil will not be labeled to conote that it is less than equivalent for a particular end use.

Administration proposal

The Administration proposal does not contain any provisions regarding the excise tax on rerefined lubricating oil.

Action in the 94th Congress

Both the House passed version of H.R. 6860 and the Finance Committee's energy provisions would have removed the tax disincentive for the use of waste or rerefined oil by exempting new oil which is mixed with waste or rerefined oil in certain circumstances from the 6-cent-per gallon excise tax.

Under this provision, if mixed oil contained up to 55 percent new oil, then all of the new oil in the mixture would have been tax-exempt. If the mixture contained more than 55 percent new oil, the rerefiner was still to be exempt from tax on so much of the new oil as did not exceed 55 percent of the mixture. However, in order to insure that this provision operated in a manner which required the use of a significant amount of wasted or rerefined lubricating oil, the tax exemption for the new oil was to be available only if 25 percent or more of the mixture consisted of waste or rerefined oil.

B. REPEAL OF EXCISE TAX ON RADIAL TIRES

Present law

Present law imposes a manufacturers excise tax of 10 cents per pound on rubber tires of the type used on highway vehicles¹ and a manufacturers excise tax of 5 cents per pound on tread rubber² Radial tires are taxed under these provisions according to the weight of the tire or the weight of the rubber used in retreading.

Administration proposal

The Administration proposal does not contain any provisions regarding the excise tax on radial tires.

Action in the 94th Congress

The House bill would have repealed the tax on radial tires and the tax on tread rubber used to recap or retread radial tires, because the use of radial tires on highway vehicles has been shown to reduce fuel consumption.

The Finance Committee did not include this provision.

EXCISE TAX EXEMPTION FOR NONHIGHWAY USE OF MOTOR FUELS

Present law

Present law imposes a retailers excise tax of 4 cents a gallon upon diesel fuel and certain other special motor fuels¹ where the fuel is sold or used for highway-related vehicle use. No tax is imposed upon the use of diesel fuel in a nonhighway motor vehicle, nor in a motorboat,

¹ This tax is scheduled to drop to 5 cents per pound for sales on or after Oct. 1, 1977.

² This tax is scheduled to expire for sales on or after Oct. 1, 1977.

¹ The special motor fuels are benzol, benezene, naphtha, liquefied petroleum gas, casing head and natural gasoline or any other liquid (other than kerosene, gas oil, fuel oil, or any product taxable as gasoline under section 4081 or as a diesel fuel under section 4041(a)). This tax is scheduled to be reduced to 1½ cents a gallon on October 1, 1979.

as the tax is imposed only if sold for or used by a "diesel-powered highway vehicle". However, for the other special motor fuels, there is a tax of 2 cents a gallon for use by a nonhighway motor vehicle or motorboat.²

Administration proposal

The administration proposal does not contain any provisions regarding excise tax exemption for nonhighway use of motor fuels.

Action in 94th Congress

The House-passed version of H.R. 6860 did not contain any provisions regarding excise tax exemption for nonhighway use of motor fuels.

The Senate Finance Committee provided for an exemption from the 2 cents-a-gallon retailers excise tax on special motor fuels sold or used for a nonhighway motor vehicle (other than for motorboat or non-commercial aviation use). This was in order to remove the tax distinction between, for example, liquefied petroleum gas (propane) used in an industrial lift truck (which is subject to a tax of 2 cents a gallon) and diesel fuel used in a diesel-powered lift truck (which is not subject to any fuel tax). The exemption was to be accomplished by providing for a refund or credit for tax paid for such nonhighway use of special motor fuels.

III. Energy Conservation and Conversion Trust Fund

Present law

Under present law, energy expenditures by the Federal Government are generally appropriated out of the general fund. Total Federal expenditures for energy research and development projects in fiscal year 1976 equalled more than \$1.7 billion.

Action in the 94th Congress

The Ways and Means Committee bill would have established an Energy Conservation and Conversion Trust Fund. This provision was adopted, with clarifying amendments, by the House.

Under the House bill, the trust would have been funded by receipts from the import tariff and the tax on business use of petroleum and petroleum products. It was estimated that revenues from these two sources would have totalled about \$4.8 billion by fiscal year 1980.¹

The bill prescribed specific limits on the amounts that could be appropriated and accumulated in the trust fund. First, it limited the amount of annual appropriations to the trust fund to \$5 billion in any fiscal year. Second, no more than \$10 billion could be accumulated in the trust fund at any one time. Any excess revenues raised above these limitations were to be transferred to the general fund. Also, any funds left in the trust fund after its expiration date (at the end of fiscal year 1985) were to be transferred to the general fund.

The bill provided that trust funds would have been available to be spent within four general areas of energy programs: (1) basic and

² This 2 cents-a-gallon reduction in the retailers excise tax on special motor fuel does not apply to such fuel for noncommercial aviation use, as there is a separate retailers tax of 7 cents a gallon through June 30, 1980.

¹ To the extent provided by subsequent law, the bill also would have permitted proceeds received by the United States Government from oil and gas properties in which the Government has an interest (for example, bonus payments and royalties received by the United States from leasing its lands and its rights for offshore drilling) to be included in the trust fund.

applied research programs relating to new energy technology; (2) projects aiding in the development and demonstration of new energy technologies; (3) programs relating to the development of energy resources from U.S.-owned properties; and (4) research projects, or capital expenditures for demonstration projects, relating to local and regional transportation systems. However, amounts to be appropriated for any specific programs (whether or not the programs were listed as examples in the legislation) were subject to the normal authorization and appropriations processes of Congress.

The House bill would have established a trust fund review board, composed of five members appointed by the President with the advice and consent of the Senate, whose function would have been to make initial recommendations to the Congress on how trust fund expenditures should be divided up among four areas of possible spending and, in addition, to conduct an annual review of how effectively the funds in the trust fund were spent in each year.

In its initial consideration of H.R. 6860, the Senate Finance Committee tentatively agreed to delete the Energy Trust Fund from the House bill and to substitute for it an Energy Development Loan Guarantee Fund to encourage the commercial development by private industry of new and alternative energy sources. However, this provision was not included in the energy provisions as reported by the Committee.

Under the Finance Committee's tentative decision, eligible projects would have included the production of energy from organic solid wastes, the production of other synthetic fuel, such as gasified coal, liquified coal, oil shale and tar sands, and the production of components and systems for sale to the public to heat and coal buildings with solar energy (nuclear projects were excluded). Eligible beneficiaries would have been required to provide at least 20 percent of the cost of the project and could obtain loan guarantees for the remaining 80 percent. No new loan guarantee could be undertaken after December 31, 1980, and the total loans guaranteed in any fiscal year also could not exceed \$2.5 billion. Under the Finance Committee's tentative decision, loans in excess of \$100 million could not be guaranteed unless the Congress were notified in writing and neither House of Congress adopted a resolution of disapproval within 30 days. The loan guarantees were to be backed by receipts from existing tariffs (or tariffs that might otherwise be provided in the bill) of 10 cents per barrel of oil, plus loans from the general fund, if needed.

MAJOR NON-TAX LEGISLATIVE PROPOSALS

I. Conservation

A. TRANSPORTATION (SECTIONS 701 AND 721 OF THE ADMINISTRATION BILL)

A Federal van pooling program would be established pursuant to which up to 6,000 vans would be placed in service by the Government and made available for use by Federal employees. The vans would be driven by Federal employees who are commuting to their jobs. All costs of the program would be offset by charges paid by the riders (but not the drivers) to the Federal Government. The program is intended to demonstrate the energy conservation and pollution control potential of van pooling.

B. BUILDINGS AND EQUIPMENT (SECTIONS 101-131 AND 741-746 OF THE ADMINISTRATION BILL)

1. Gas and electric utilities would be required to offer their customers a residential energy conservation service. Under this service, the utility would offer to install energy conservation equipment (such as insulation), and the customer would repay the utility through additions to the monthly utility bills. Customers would have the option of having the equipment installed by a supplier other than the utility. The utilities must also inform customers of other available residential conservation programs and how to obtain financing, materials and labor to perform residential conservation themselves.

2. Loans for residential energy conservation will be made eligible for purchase in the secondary market by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

3. Funding will be increased for the existing low-income residential conservation program (weatherization) to \$130 million in fiscal 1978 and \$200 million per year in fiscal 1979 and 1980.

4. A Federal grant program would assist public and non-profit schools and hospitals in financing conservation measures. The program would be funded at a rate of \$300 million per year for 3 years.

5. Up to \$100 million would be spent over the next 3 years to add solar hot water and space heating to suitable Federal buildings to reduce consumption of conventional fuels and to demonstrate the commercial potential of such uses of solar energy.

C. APPLIANCES (SECTION 201 OF THE ADMINISTRATION BILL)

Mandatory standards of energy efficiency for certain major home appliances will replace the voluntary targets of existing law as soon as possible. These standards will apply to furnaces, room and central air-conditioners, water heaters, refrigerators and other major appliances.

D. COGENERATION OF ELECTRICITY AND PROCESS STEAM (SECTION 522 OF THE ADMINISTRATION BILL)

1. An exemption from Federal and State public utility regulation would be available to organizations using cogeneration to produce electricity.

2. The Federal Energy Administration would be required to establish procedures to assure fair rates for both sale of power by co-generators and for purchase of back-up power.

3. Organizations using cogeneration would be entitled to use public utility transmission facilities to sell surplus power and buy back-up power at fair prices.

E. UTILITY RATE REFORM (SECTIONS 501-521 AND 541-548 OF THE ADMINISTRATION BILL)

1. State Public Utility Commissions must require their regulated electric utilities to phase out and eliminate promotional, declining, and other rates for electricity that do not reflect costs.

2. Electric utilities would be required to offer to each customer either time-of-day rates or a load management system, and rates reflecting the savings from this system.

3. Master metering for electricity would generally be prohibited in new structures.

4. State Public Utility Commissions would require gas utilities to eliminate declining block rates and to implement such rules as the FEA may prescribe with respect to master metering, summer-winter rate differentials, and interruptible rates.

5. The Federal Power Commission would be authorized to require interconnection and power pooling between utilities even if they are not presently under FPC jurisdiction, and to require the transmission of power between two noncontiguous utilities across a third utility's system.

II. Coal and Nuclear Power

A. COAL CONVERSION REGULATORY POLICY (SECTIONS 601-603 OF THE ADMINISTRATION BILL)

1. Industry and utilities would be prohibited from burning natural gas or petroleum in new boilers with only limited environmental and economic exceptions. Industrial firms would also be prohibited from burning gas or petroleum in facilities other than boilers by regulations applicable to types of installations, or on a case-by-case basis.

2. Existing facilities with coal-burning capability would be prohibited from burning gas or oil where the substitution would be economically feasible and environmentally acceptable.

3. With limited temporary exceptions, no utility will be permitted to burn natural gas after 1990.

4. Facilities burning coal would be required to obtain approval to shift to petroleum or natural gas.

5. Utilities burning natural gas would be required to obtain a permit to shift to petroleum.

6. Any industrial firm or utility prohibited from using natural gas would be allowed to sell its contract to purchase gas at a price that would provide adequate compensation.

B. NUCLEAR POWER

Legislation, which has been separately submitted, would guarantee the sale of uranium enrichment services to any country agreeing to comply with our non-proliferation objectives.

PROPOSALS FOR ADMINISTRATIVE ACTION

Part of the Administration's energy program may be implemented without legislative action. The more important proposals in this area include the following:

In the area of transportation, the Administration will support vigorous enforcement by the States of the 55-mile-per-hour speed limit (with possible withholding of Federal Highway Funds if States fail to comply). In addition, the Administration will promulgate efficiency standards for light-duty trucks. Also, the Government will purchase automobiles which exceed the mandatory fuel efficiency standards.

In the area of buildings and structures, the Department of Agriculture will implement a rural home weatherization program. The Department of Commerce will encourage State and local governments to include energy conservation items in local public works programs. HUD will advance by one year (to 1980) the effective date of mandatory energy standards required for new residential and commercial buildings. By 1985, Federal agencies will reduce energy consumption from 1975 consumption levels by 20 percent for existing Federal buildings and 45 percent for new Federal buildings.

The Government will implement new data gathering systems in the area of energy reserves, financial information on large petroleum companies and information needed to implement management programs in the event of energy emergencies. The Government will also implement policies to foster competition among oil and gas producers.

The strategic petroleum reserve will be increased from its current level of 500 million barrels to a level of one billion barrels. In the area of coal, a committee will be appointed to study the health effects of increased coal production and use, and there will be a major expansion of Federal research to develop coal derived substitutes for oil and gas.

There will be deferment of commercial reprocessing and recycling of spent nuclear fuels and the fast breeder reactor demonstration project pending further Federal evaluation. There will be an expansion of our uranium enrichment capacity and improvement in the area of safety checks for nuclear plants as well as a review of ERDA's waste disposal program. In addition, there will be an evaluation as to the potential for additional hydroelectric power installations at existing dams.

Federal leasing and environmental policies will encourage the development of geothermal resources.

Further, there will be a study of the United States energy transportation system to promote increased supplies of oil and natural gas from Alaska and the Outer Continental Shelf and to facilitate the transportation of possible further increases in western coal production.

ENERGY LEGISLATION ORIGINATING IN OTHER COMMITTEES

I. "Energy Policy and Conservation Act"—Public Law 94-163 (S. 622), December 22, 1975

The Act continued FEA authority, under certain circumstances, to require utilities and other major fuel users to convert to coal as their primary energy source. In addition, it authorized the Secretary of the Interior to establish and to enforce maximum efficient production rates with respect to crude oil and natural gas on Federal lands, and to prescribe a rule which would limit joint bidding on offshore leases by major oil companies. Moreover, the Act authorized Federal loan guarantees for developing new underground low-sulphur coal mines.

The Act authorized the President to restrict exports of coal, petroleum, and petroleum products, as well as exports of supplies and equipment related to the further exploration or production of these resources. It also gave the President standby authority to establish mandatory conservation and rationing measures in times of energy emergencies. Furthermore, the Act established a Strategic Petroleum Reserve for the storage of up to 1 billion barrels, but not less than 150 million barrels, of petroleum products within three years.

In addition, the Act authorized financial assistance to States to aid the development of State-administered energy conservation programs, and established programs to encourage increased efficiency of energy use by industry and its conservation within the Federal Government.

The Act established mandatory average fuel economy standards, effective with model year 1978, for passenger automobiles and other light-duty highway vehicles. Under these standards, each manufacturer and importer of passenger automobiles must obtain the following fleet average fuel economy: 18 miles per gallon (mpg) in model year 1978; 19 mpg in model year 1979; 20 mpg in model year 1980; and 27.5 mpg in model year 1985, and thereafter. Standards for model years after 1985 may be adjusted administratively to the maximum feasible level, but either house may disapprove a modification which reduces a standard to below 26 mpg. Similarly, the Secretary of Transportation is authorized to set standards for model years 1981-84, as well as those for vehicles other than passenger automobiles, at the maximum feasible level. In determining the maximum feasible fuel efficiency level, the Secretary is to consider, in light of industry-wide factors, (1) technological feasibility, (2) economic practicability, (3) the effect of other Federal motor vehicle standards on fuel economy, and (4) the nation's need to conserve energy.

Civil penalties are to be assessed if a manufacturer fails to meet the fuel economy standards, or if any party fails to comply with the Act. However, under limited circumstances, these penalties may be waived or modified. Conversely, whenever a manufacturer exceeds the standards with regard to a model, a credit is available.

Judicial review is available upon petition by any party adversely affected by action taken by the Secretary, the FTC, or the EPA, as well as with regard to the assessment of civil penalties.

The Act requires the FEA to coordinate programs for energy use testing and labeling of major appliances (e.g., air conditioners, refrigerators, water heaters, etc.); furthermore, the FEA is to set target energy efficiency standards for appliances, and to require manufacturers to report their progress in meeting these standards. However, no penalties are provided for failure to achieve the target level.

The Act revised price controls on "old" and "new" oil by establishing a pricing formula for domestically produced crude oil which set a single maximum weighted average price for both types of oil at \$7.66 a barrel. The composite price may be adjusted upward, but not in excess of 10 percent per year, to take account of inflation and to provide a production incentive.

The President was given considerable discretion for structuring the price regulatory system and in classifying production. Thus, an initial ceiling of \$11.28 per barrel could be applied to new oil and to production from stripper well leases. Regulatory control of old oil cannot be modified unless the President finds that the change will provide a positive incentive. A ceiling price could be established, in certain instances, which exceeds the market clearing price so long as the actual weighted average first sale price for the totality of domestic crude oil production does not exceed the allowable maximum weighted average price. Actual prices for all domestic crude oil production are to be set by the FEA, subject to the maximum weighted average price of \$7.66, as adjusted by the annual 10 percent factor.

II. "Naval Petroleum Reserves Production Act of 1976"—Public Law 94-258 (H.R. 49), April 5, 1976

Title I of the Naval Petroleum Reserves Production Act of 1976 provided for the transfer of the National Petroleum Reserve Number 4 in Alaska to the administrative jurisdiction of the Secretary of the Interior on June 1, 1977.

The Act provided that only exploration is authorized at the National Petroleum Reserve in Alaska. After studies are completed and transmitted to the Congress, as required by the legislation, then the Congress will determine how future development and production will take place. Until authorized by the Congress, there will be no production of petroleum from this reserve, except for a limited quantity from the South Barrow gas field which is essential to the Native village of Barrow and other communities and installations near Point Barrow.

The President through appropriate executive departments or agencies and in consultation with the State of Alaska shall make a detailed study of the petroleum resources in the reserve to determine the best procedures for the development, production, transportation and distribution of such petroleum resources. The study is to be completed no later than January 1, 1980.

In addition the legislation provides for the creation of a task force to conduct a study to determine the values of, and best uses for, the lands within the reserve. This study differs from the President's study discussed above in that it is a comprehensive review of all resource values, other than petroleum, which the lands within the reserve con-

tain. It will be the responsibility of the Secretary to prepare and submit the report of the task force, together with his recommendations, to the Committees on Interior and Insular Affairs on or before April 5, 1979.

Title II of the Petroleum Reserve Production Act of 1976 requires the Secretary of the Navy to produce petroleum in Naval Reserves 1, 2, and 3 (Elk Hills, California, Buena Vista, California, and Tea Pot Dome, Wyoming).

He is authorized either to produce such petroleum or to have it produced under a contractual arrangement. Petroleum leases are a permissible arrangement only at Naval Petroleum Reserve No. 2 (Buena Vista), where such leases presently exist.

Generally, in the past the naval petroleum reserves have been used and operated only to the extent that such production was found necessary by the Secretary, with the approval of the President, and then only when authorized by a joint resolution of the Congress. However, the Act directs the Secretary to promptly commence the production of petroleum from these reserves at the maximum efficient rate and to continue such production for a period of six years. During this period, the Secretary is to sell or otherwise dispose of the United States share of production.

Production of petroleum at the naval petroleum reserves was to commence 90 days after the enactment of this legislation (which was enacted April 5, 1976). After six years of production, the reserves will again be shut-in unless the President takes steps to extend the operations. To accomplish this, he must first assess the current and prospective need for petroleum and determine the necessity for continued production, then he must submit to the Congress the report of his assessment together with a certification that he has determined that continued production is in the national interest. Following receipt of the report, unless either the Senate or House of Representatives expressly disapproves further production, it will be extended for three years. Additional extensions of three years each can be accomplished by following the same procedures.

III. "Energy Conservation and Production Act"—Public Law 94-385 (H.R. 12169), August 14, 1976

The Act extends the Federal Energy Administration through 1977.

It provides price incentives for stripper well production and secondary and tertiary recovery methods.

The Act also establishes an Office of Energy Information and Analysis in the FEA and requires the Office to establish a National Energy Information System.

It requires the National Bureau of Standards to assist FEA in developing an energy efficiency improvement target for appliances.

The Act directs the Energy Resources Council to prepare an annual report (beginning July 1, 1977) reviewing: Federal energy conservation activities; the correctness of all energy conservation targets and progress toward their achievement; progress under State energy conservation plans; private conservation efforts and the Federal Government's efforts to promote them; and whether existing conservation targets and goals are adequate to bridge the gap between domestic energy production capacity and needs and whether additional incen-

tives programs, including mandatory measures, might be useful to balance domestic supply and demand.

In addition the Act requires the FEA to develop proposals for improvement of electric utility rate design, to fund State demonstration projects, to participate in proceedings of utility regulatory commissions and provide financial assistance to State offices of consumer services to assist presentation of consumer interests before these commissions.

The Act requires the promulgation of performance standards for new buildings and denies any Federal financial assistance to any new building not meeting such standards. Grants may be made to States to assist them in meeting performance standards. Federal buildings must meet these standards. These standards must be promulgated no later than 3 years after the date of enactment.

The FEA is directed to work with States to provide financial assistance to low-income persons for weatherization of dwellings. Under this \$200 million program, State-level grants may be made for insulation, caulking and weather-stripping, storm windows or doors, and energy saving mechanical equipment up to \$50 in value. The amount of assistance is generally limited to \$400 per residence.

Under the Act, the FEA is directed to develop regulations for funding supplemental State energy conservation plans.

The Secretary of HUD is directed to implement a national demonstration program to test various forms of financial assistance to encourage energy saving methods in existing housing. To accomplish these tests and demonstrations, the Secretary was authorized to make available direct grants, low-interest-rate loans, interest subsidies, or other appropriate forms of assistance to home owners or renters for the installation of energy-conserving measures. Except in the case of low-income families, with respect to which the Secretary was authorized to exceed the monetary limits, aid for an energy conservation measure was limited to the lesser of \$400 or 20 percent of the total cost (including installation). In a case involving a change from a depletable source of energy to a nondepletable source (such as solar energy), however, the applicable limit was the lesser of \$2,000 or 25 percent of the cost. The Act specified that no person was to be eligible for both this aid and for an income tax credit for the same energy conservation measure. A total of \$200 million was appropriated for this program.

The Act permits the FEA to guarantee loans to finance the installation of energy savings measures in existing buildings and industrial facilities. These loan guarantees may be made in cases in which the financing is not otherwise available on reasonable terms, but in which there is nevertheless a reasonable prospect of payment of the obligation. A fee is to be charged the borrower to cover the administrative costs of the guarantee or commitment to guarantee, but the FEA Administrator may waive this fee. Guarantees or commitments to guarantee may not be made for a total of more than \$5 million as to any one borrower, and a guarantee or guarantee commitment may not be made as to any single energy conservation measure in excess of the lesser of 90 percent of its cost or 25 percent of the fair market value of the building involved. The total amount of obligations which may be guaranteed or as to which guarantee commitments may be made under

this program is limited to \$2 billion, and an appropriation of \$60 million was authorized for this program, which was scheduled to expire September 30, 1979.

IV. "Alaska Natural Gas Transportation Act of 1976"—Public Law 94-586 (S. 3521) October 22, 1976

This Act was designed to expedite the construction of a system for the transportation of natural gas from Alaska to the contiguous States by involving the President and Congress in the decision-making process on the selection of a system and by limiting the jurisdiction of the courts and administrative agencies.

In lieu of proceedings before the Federal Power Commission to determine which of contesting applicants would be permitted to construct a system for transporting gas from the Prudhoe Bay Field in Alaska to the contiguous States, the Act established a 4-step process for the selection of a system and the expedition of its construction. In the first stage, the Federal Power Commission (FPC) is directed to review the contesting proposed systems and to report its recommendations to the President by May 1, 1977. In the second stage, an opportunity is provided for Federal officers and agencies, State Governors and other interested parties to comment on the FPC's request. The Council on Environmental Quality is to hold hearings and report to the President by July 1, 1977. The President has until September 1, 1977, to either accept the FPC's recommendation or designate an alternative system if he determines that a system should be built. The President's decision is to be submitted to the Congress by September 1, 1977, or within 90 days thereafter if the extra time is necessary for his decision.

In the third stage of the process, the Congress will review the President's decision under expedited procedures designed to assure that a vote on the question will not be blocked. For the President's decision to go into effect, the Congress must enact a joint resolution of approval within the 60-day period following its receipt by both Houses.

The final stage, in the event the Congress approves a Presidential decision, is the mandated approval by Federal officers and agencies of any required approvals, certificates, leases, or other authorization. Judicial review of these actions must be sought within 60 days and will be severely limited.

The Act provides that any exports of Alaska natural gas shall be subject to certain export limitations and that equal access to the transportation system shall be available to all persons seeking to transport natural gas.

The Act also directs the President to determine by April 22, 1977, what procedures are necessary to insure the equitable allocation of north slope crude oil to the northern tier of States and report to the Congress his findings on this and related matters. The Attorney General is directed to review the anti-trust problems relating to Alaska natural gas and report to the Congress by April 22, 1977.

V. "Emergency Natural Gas Act of 1977"—Public Law 95-2
(S. 474), February 2, 1977

This Act grants the President, until April 30, 1977, the authority to order emergency deliveries of natural gas supplies between interstate pipelines and distribution companies served by such pipelines on a finding that maintenance of natural gas supplies to residential and other high priority users is in danger and that all reasonable remedies to maintain such supplies have been exhausted. In addition to residences, high priority users include small businesses (using less than 50 mcf on a peak day) and other essential users, such as schools, nursing homes, hospitals, etc., where the loss of heat would threaten life, health, or property. Also, the President may order deliveries to prevent irreparable damage to major industrial facilities as a result of freezing weather. The Act also authorizes the President, until July 31, 1977, to approve emergency sales of natural gas to interstate pipelines at unregulated prices, subject to his authority to prescribe the terms and conditions for such sales and to determine if such sales are made at a fair and equitable price.



