

SUMMARY OF CONFERENCE DECISIONS ON H.R. 3919

CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980

(as of February 8, 1980)

Joint Committee on Taxation
February 13, 1980
JCX-2-80

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AS OF FEBRUARY 8, 1980

This summary covers the decisions made by the conference committee on H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1980, as of February 8, 1980. The items are listed in the order in which they appear in the staff's Conference Comparison, and the numbers in each heading refer to the numbers in that Comparison. Following the summary is a list of items on which the conferees have not yet acted.

The revenue summary of the tax credits and other business energy tax incentives will be available separately, as soon as the tables are completed.



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A. WINDFALL PROFIT TAX

1. Tier 1 oil

The conferees agreed to merge tier 1 into tier 2 and tax it under the rules applicable to that tier.

2. Tier 2 oil

The conferees agreed to a 70-percent tax rate. The tier 2 base price would be the May 1979 upper tier ceiling price on a property (which averaged \$13) reduced by any adjustments needed to achieve the \$227.3 billion revenue total between 1980 and 1990. The inflation adjustment to that base price would be lagged by two quarters both for tier 2 and for the other tiers as well. Thus, the inflation adjustment to the base price for the first quarter of 1980 would equal the inflation between the second and third quarters of 1979.

Oil deregulated under DOE's front-end tertiary program would be exempt from the tax if the oil could not have been deregulated under any other price control provision. For projects controlled by major oil companies, the tax would apply but refunds would be available if needed to allow the company to take full advantage of the front-end tertiary program.

3. Tier 3 (stripper) oil

The conferees agreed to a tax rate of 60 percent and a base price equal to \$15.30 adjusted for quality and location differentials. The precise formula for determining a property's tier 3 base price would be set in the statute for a 6-month interim period and under Treasury regulations thereafter. Both the interim formula and the permanent rule would be drafted to achieve base prices averaging \$15.30.

The conferees deleted the Senate exemption for oil owned by the Federal Government.

4. North Slope Alaskan oil

The conferees agreed to tax oil from the Sadlerochit Reservoir on Alaska's North Slope in tier 2, using the rules in the Senate bill. Oil produced from any reservoir penetrated by a well located north of the Arctic Circle would be exempt from the tax.

5. Newly discovered oil

The conferees agreed to tax newly discovered oil, as defined under the price control regulations, at a 30-percent rate on a base price equal to \$16.55 adjusted for quality and location differentials. The newly discovered oil base price would be determined under rules similar to those used for the tier 3 base price. The conferees agreed to delete the House provision terminating the tax on newly discovered oil after 1990.

6. Heavy oil

The conferees agreed to tax heavy oil (as defined by the Senate bill) like newly discovered oil, except that the base price for heavy oil would be based on quality differentials in December 1979.

7. Incremental tertiary oil

The conferees agreed to tax incremental tertiary oil like newly discovered oil. The definition of incremental tertiary oil would be the same as in the Senate bill except (1) the decline rate before the project beginning date would be 1 percent, (2) a project would no longer benefit from a State regulatory certification of eligibility after the State has revoked its certification, (3) there would be no provision for continuing qualifications after the tertiary process is ended, and (4) old projects would not qualify except to the extent they are significantly expanded.

8. Severance tax deduction

The conferees agreed to allow State (but not local or Indian) severance taxes to be deducted in determining the taxable windfall profit on all types of oil up to a limit of 15 percent. Tax increases after March 1979 would only be deductible if they applied to the entire price of the barrel.

9. Independent producers

Independent producers, but not royalty owners, would be allowed a 50-percent rate on tier 2 oil and a 30-percent rate on tier 3 oil for up to 1,000 barrels per day of production. There would be no change to the existing law on percentage depletion. (The conferees still have open issues relating to the technical application of certain rules.)

10. State and local government oil

The conferees agreed to the Senate provision.

11. Exemptions for particular kinds of taxpayers

Indian tribes.--The conferees agreed to a 30-percent tax rate for Indian tribes (covered under the Senate provision) and (until 1992) oil owned by Alaska Native Regional Corporations from lands received under the Native Claims Settlement Act.

Charities.--The conferees agreed to exempt oil owned by charitable educational institutions and medical facilities and by churches which have dedicated the proceeds to medical facilities or educational institutions, as long as the properties were owned by the charity or church on January 21, 1980.

12. Net income limitation

The conferees agreed to the Senate provision for a 90-percent limit but added an election to capitalize tertiary injectants for purposes of determining the net income limit.

13. Production payments

The conferees agreed to the Senate provision.

14. Administrative provisions

The conferees agreed to the Senate provisions with some technical amendments. The principal changes would be to replace the Senate bill's tentative refunds with a system of interperiod withholding adjustments and to provide a mechanism whereby producers subject to lower tax rates could arrange to have tax withheld at those lower rates.

15. Tax enforcement

Same in both bills.

16. Property transfers

The conferees agreed to the House provision with the addition of heavy oil properties.

17. Tax Court

The conferees agreed to give the Tax Court concurrent jurisdiction over the tax but not to add any new judges to the Court.

18. Termination of tax

The conferees agreed to phase out the tax over a 33-month period, starting in January, 1988 or in the month after estimated cumulative net revenues received as a result of the tax exceed \$227.3 billion, whichever is later. Even if the \$227.3 billion figure is not reached, the phaseout would start no later than January 1991.

19. Study of decontrol and tax

Same in both bills.

B. RESIDENTIAL ENERGY TAX CREDITS

20. General provisions

a. Principal residence requirement.--The conferees agreed to delete the provision of the Senate bill which would have repealed the principal residence requirement under present law.

b. Landlords and joint ownership.--The conferees accepted the Senate provision allowing the energy credit in cases of joint ownership of qualified property, but they did not agree to permit landlords a residential energy credit. Landlords, however, will continue to be eligible for the business energy investment credit for eligible property.

c. Discretionary authority.--The conferees agreed to retain the Secretary's authority to add items to the list of property that qualifies for the residential insulation and solar credits. In addition, the conferees agreed to specify standards which the Secretary will use to evaluate whether specific items will qualify for a credit.

21. Residential energy conservation credit

The conferees agreed not to add any specific items to the list of eligible property. They agreed, however, to recommend that the Secretary of the Treasury evaluate the six new items in the Senate bill under the standards provided in item 20 above.

22. Residential renewable energy source credit

The conferees agreed to increase the tax credit on solar, geothermal and wind energy property to 40 percent of the first \$10,000 of expenditures. This credit is now 30 percent on the first \$2,000 and 20 percent on the next \$8,000 of expenditures.

In addition, the conferees agreed that the credit would be extended to equipment used to generate electricity from these renewable energy sources, intangible drilling costs for geothermal wells if deductions have not been taken for these costs, and structural components needed for the installation of renewable energy property.

23. Residential passive solar credit

The conferees agreed to delete this provision of the Senate bill.

C. BUSINESS ENERGY TAX INCENTIVES

24. Solar and wind energy property

The conferees agreed to increase the present 10-percent energy credit to 15 percent from 1980 through 1985. Solar process heat equipment would be made eligible, and the present refundable feature of the credit would be repealed.

25. Geothermal equipment

The conferees agreed to increase the present 10-percent energy credit to 15 percent from 1980 through 1985.

26. Ocean thermal equipment

A 15-percent credit through 1985 would be allowed for equipment at two sites selected by the Secretary of the Treasury.

27. Small-scale hydroelectric facilities

This item has been left open.

28. Cogeneration equipment

This item has been left open.

29. Specially defined energy property

Modifications to alumina electrolytic cells would be eligible for a 10-percent energy credit from October 1, 1978, through 1982. The authority of the Secretary of the Treasury to identify other items of eligible property would be retained, and specific standards would be added concerning eligibility of other items under the Secretarial authority. Industrial heat pumps and infrared heating panels would not be specifically eligible but would be subject to Secretarial authority.

30. Petroleum coke and petroleum pitch

The conferees agreed to allow the regular investment credit and accelerated methods of depreciation for boilers which use petroleum coke and pitch as a primary fuel. The energy credit would not be allowed for equipment which uses these substances as a primary fuel or a chemical feedstock. In addition, the energy credit for equipment using coal as a feedstock in coal liquefaction and gasification would include equipment to treat intermediate products derived from these processes.

31. Coke and coke gas equipment

The conferees agreed to the Senate provision which would make equipment to produce coke or coke gas from coal eligible for a 10-percent energy credit through 1982.

32. Biomass property

The present 10-percent energy credit through 1982 would be extended through 1985 for equipment to burn biomass, convert biomass into a synthetic solid fuel or burn a synthetic solid fuel derived from biomass. Biomass would include both wood and nonwood biomass.

(No decision was made concerning an expanded credit for equipment to convert biomass into alcohol for fuel purposes. This is to be considered in connection with the gasohol provisions.)

33. Regular investment credit for energy property

The conferees agreed to delete this provision in the Senate bill.

34. Public utility property

The conferees agreed to delete this provision in the Senate bill.

35. Vanpooling

The conferees agreed to delete this provision in the Senate bill.

36. Intercity buses

The conferees agreed to the Senate provision for a 10-percent energy credit through 1985 for certain intercity buses to the extent the taxpayer's total operating seating capacity is increased over seating capacity for the preceding year.

37. Truck aerodynamic equipment

The conferees agreed to delete this provision in the Senate bill.

38. Affirmative commitments

The conferees agreed to the Senate provision under which the 10-percent energy credit is extended through 1990 for costs incurred in certain long-term energy projects where affirmative commitments are made to acquire or construct qualifying property.

39. Electric motor vehicles

The conferees agreed to delete this provision in the Senate bill.

40. Alternative energy production credit

The conferees agreed to provide a tax credit for producers of certain alternative energy sources. The tax credit would be \$3 per barrel of oil-equivalent, with oil-equivalency measured by the energy content of each fuel relative to that of a barrel of oil. Energy sources eligible for the credit would include (1) oil from shale and tar sands; (2) natural gas from tight sands, geopressured brine, coal seams or Devonian shale; (3) liquid, gaseous or solid synthetic fuel (other than alcohol), including petrochemical feedstocks, from coal liquefaction or gasification; (4) gas from biomass; (5) steam from solid agricultural byproducts; and (6) processed wood.

The credit would be allowed for sales before January 1, 2001, from facilities placed in service between December 31, 1979, and January 1, 1991. The credit would phase out as the average wellhead price for uncontrolled domestic oil rises from \$23.50 to \$29.50. Both the credit and the phaseout range would be indexed for post-1979 changes in the GNP deflator.

Two special rules would apply to the credit for tight sands natural gas. It would not be available for gas not subject to price controls, and the credit would not be indexed for inflation.

41. Alcohol fuels

This item relating to alcohol fuels (including gasonol) has been left open.

42(a) IDB's for solid waste disposal facilities

The conferees decided that solid waste disposal facilities eligible for financing with tax-exempt industrial development bonds (IDB's) would include property which is used primarily to convert fuel derived from solid waste into steam as long as such property, and the property used for the collection and processing of the solid waste, is owned by the same person.

The conferees also decided that interest on an obligation used to finance a solid waste disposal facility and a related electric energy facility is tax exempt if--

(1) all the electric energy and steam which is produced and sold from the two facilities is sold to the Federal Government and is not resold;

(2) the facility is owned for tax purposes by and operated by or on behalf of a State or local government; and

(3) substantially all the fuel used to operate the electric energy facility is solid waste or is derived from solid waste produced at the solid waste disposal facility.

The conferees agreed that all IDB's made tax exempt by this bill must be in registered form.

(b) IDB's for solid waste--alcohol facilities.--This item has been left open.

(c) IDB's--sales to nonexempt persons.--This item has been left open.

43. IDB's for hydroelectric facilities

This item has been left open.

44. IDB's for renewable energy property

The conferees decided that interest on IDB's used to finance renewable energy property would be tax exempt where two requirements are satisfied:

(1) the obligations are general obligations of a State; and

(2) the authority for issuance of the obligations requires that taxes be levied in sufficient amount to provide for payment of principal and interest on the obligations.

Renewable energy property is defined as any property used to produce energy (including heat, electricity, and substitute fuels) from renewable energy sources (such as wind, solar, geothermal, waste heat, biomass or water).

The conferees also decided that the maximum amount of obligations that may be outstanding at any time under this provision with respect to any State is the lesser of \$500 million or 1/2 of 1 percent of the value of property within the State.

45. IDB's for cogeneration property

The conferees decided to delete the Senate provision relating to IDB's used to finance cogeneration property.

46. Tertiary injectants

The conferees agreed to the Senate provision.

47. Credit for residential energy efficiency programs

The conferees agreed to delete the Senate provision.



D. LOWER INCOME ENERGY ASSISTANCE

The provisions relating to low-income energy assistance (48) and the tax credit for users of residential energy (49) have been left open.

E. TRUST FUNDS AND USE OF WINDFALL TAX REVENUES

50. Trust funds

The issue relating to the use of the windfall profit tax revenues has been left open.

51. Reservation of windfall profit tax revenues for railroads

The conferees agreed to delete the Senate provision on the understanding that this matter would be dealt with when the issue of the disposition of windfall tax revenues was considered.

F. OTHER TAX PROVISIONS

52. Repeal of carryover basis

The conferees agreed to the Senate provision to repeal the carryover basis provision.

53. Exclusion of interest and dividend income

This item has been left open.

54. Involuntary liquidation of LIFO inventory

The conferees agreed to the Senate provision.

55. Recognition of inventory profits on liquidations

The conferees agreed to the Senate provisions but delayed the effective date until January 1, 1982.

G. OIL IMPORT AND MISCELLANEOUS PROVISIONS

56. Oil imports

The conferees agreed to remove the President's authority under the Trade Expansion Act of 1962 to impose oil import quotas whenever Congress has passed a joint resolution disapproving such a quota. The resolution would not be subject to amendment. The resolution could be vetoed by the President, but the veto could be overridden by a two-thirds vote of both Houses.

57. Oil import information reports

The conferees agreed to delete the Senate provision.

58. Report on national energy research and development

The conferees agreed to delete the Senate provision.



OPEN ISSUES FOR CONFEREES TO DECIDE

2. Adjustments to the tier 2 base price to meet the revenue target of \$227.3 billion between 1980 and 1990.
5. Definition of exempt newly discovered Alaskan oil.
9. Technical amendments to independent producer provisions.
14. Amendments to administrative provisions needed to deal with retroactive application of tax.
18. Presidential notice of slowdown of price decontrol.
- 20.-47. Rules to limit "double dipping" between different energy tax incentives and between tax incentives and spending programs.
27. Energy credit and depreciation for small scale hydroelectric facilities.
28. Energy credit for cogeneration.
32. Energy credit for property used to produce alcohol fuels.
41. Alcohol fuels (including gasohol) provisions.
- 42(b) and (c). Exemption for interest on IDB's for solid waste disposal facilities.
43. Exemption for interest on IDB's for hydroelectric facilities.
48. Low-income energy assistance program.
49. Tax credit for residential users of energy.
50. Use of windfall profit tax revenues.
53. Exclusion for interest and dividend income.