Committee on Ways and Means

The Energy Tax Policy Act of 2003

Summary

I. Conservation

Tax credits for residential energy-efficient property: Includes a 15% tax credit (up to $2,000) for residential solar hot water heaters, photovoltaics, and wind property. No depreciation is allowed on wind facilities if credits are taken.

Tax credits for producing electricity from certain renewable resources: Extends the tax credit for producing electricity (currently 1.8 cents per kw/hr indexed for inflation for a 10 year production period) from wind and closed-loop biomass (including closed-loop biomass co-fired with coal).

Adds new qualifying sources, including open-loop biomass, landfill gas, "trash to steam," geothermal, solar, small irrigation facilities, and animal waste nutrients. Credit is 1.2 cents per kw/hr indexed for inflation for a 5-year production period. New solar and geothermal facilities receive a credit of 1.8 cents per kw/hr for 5 years.

The credits are reduced, up to 50%, if the facility receives tax-exempt financing or government grants, except co-fired biomass. With respect to geothermal and solar facilities, taxpayers can choose between Section 45 production tax credits or Section 48 investment tax credits. That election is permanent.

The credits are not "tradable."

GAO would conduct a study on the ability of all section 45 claimants to compete without tax subsidies, including an analysis of cost savings from not having to dispose of biomass and manure.

Tax credits for producing electricity from advanced nuclear reactors: Adds credit for producing electricity from advanced nuclear reactors. The credit is 1.8 cents per kw/hr for nuclear reactors approved by the Nuclear Regulatory Commission after date of enactment. Nationwide cap of 6,000 MW. Maximum credit amount is $125 million per year per 1,000 MW capacity for eight years. Facilities must be placed in service prior to 2121.

Tax credits for fuel cells Includes a 20% credit for residential and business fuel cells capped at $500 per ½ kilowatt of capacity.

Tax incentives for fuel-efficient vehicles and refueling infrastructure: Includes tax credits for fuel savings (as compared to baseline vehicles) for the purchase of certain fuel-efficient passenger cars and trucks, including fuel cell vehicles, hybrid vehicles, alternative fuel vehicles, and advanced lean burn vehicles.

Defines hybrid cars and light trucks as vehicles that meet a 4% maximum available power (MAP) threshold. Hybrid cars and light trucks are eligible for credits ranging from $400 to $2,400 based on fuel economy (compared to baseline vehicles) and credits ranging from $250 to 1,000 based on lifetime fuel savings (compared to baseline vehicles). Vehicles weighing 8,500 pounds or less must meet Tier II, Bin 5 emissions standards to be eligible for credits.

Includes tax credits for medium and heavy duty hybrid trucks. Medium duty trucks must have at least 10% MAP to qualify; heavy trucks must have 15% MAP to qualify. Treasury shall issue regulations specifying how manufacturers can self-certify that trucks sold are more efficient than other trucks in the same weight class with similar uses.

Advanced lean burn vehicles (cars and light trucks only) are eligible for comparable credits to those available to hybrids. Vehicles weighing 6,000 pounds or less must meet Tier II, Bin 5 emissions standards and vehicles between 6,000 pounds and 8,500 pounds must meet Tier II, Bin 8 emissions standards to be eligible.

Once a manufacturer has sold 80,000 credit eligible hybrids or advanced lean burn vehicles, the full credit is available to buyers through the end of the next calendar quarter. The credit is reduced by 50% for the next two quarters and by 75% in the subsequent two quarters. No credit is allowed after that.

Clarifies that lessor/owner get the credits. Lessor cannot be tax-exempt entity (*i.e.,* sale/leaseback arrangements do not qualify).

Increases the amount that taxpayers may expense for certain refueling infrastructure, including new hydrogen infrastructure.

Tax credits for energy-efficient appliances: Includes tax credits for the domestic production of certain highly efficient washing machines and refrigerators. The $100 and $150 credits would apply to appliances produced in excess of 110% of a three-year rolling average of prior production.

Tax credits for energy-efficient upgrades to existing homes: Includes a 20% credit (up to $2,000) for the purchase of energy-efficient building envelope components meeting 2000 IECC standards as supplemented on date of enactment, including insulation, windows, and roofing systems.

Tax credits for energy-efficient new homes: Includes a tax credit to the builder of new energy-efficient homes. The credit is $1,000 for homes that are 30% more efficient than 2000 IECC standards as supplemented on date of enactment and $2,000 for homes that are 50% more efficient. Manufactured homes that meet the EnergyStar program standard would qualify for the $1,000 credit. Contractors may self-certify or contract out subject to Treasury regulations.

Deduction for energy-efficient commercial property: Includes a deduction, up to $1.50 per square foot, for upgrades to new or existing business property which reduce lighting, heating, cooling, or hot water costs by 50% compared to a baseline standard. Credit is extended to existing buildings that retrofit lighting systems.

Tax incentives for electricity "smart meters": Includes a three-year cost recovery period for electricity "smart meters." The meters must record energy usage during at least four periods per day and provide the information to the consumer and utility on at least a monthly basis.

Tax credits for combined heat and power (CHP) systems: Includes a 10% tax credit for the business purchase of certain systems that use both mechanical and heat power. The systems must have less than 15 megawatts of capacity and meet certain efficiency standards. Systems using certain agricultural waste would receive a reduced credit based on their efficiency.

Individual AMT hold harmless: Provides meaningful incentives by allowing individuals using the energy credits to take them against AMT as well as the regular tax.

Diesel-water emulsions: Reduces excise taxes on diesel-water emulsions by taxing mixture based on the BTU value of the fuel.

Tax incentives for biodiesel: See VEETC, below.

Expansion of small-producer ethanol credit: Expands the credit to increase the size of eligible producers from 30 million gallons to 60 million gallons, allows the co-ops to pass the credit through to patrons, liberalizes the carry-forward ordering rules, and allows the credit to be taken against AMT. Extends credit for three years.

Volumetric Ethanol Excise Tax Credit (VEETC): Creates a new excise tax credit for ethanol (52 cents/gallon dropping to 51 cents/gallon as under current law). Effective 2004-2010; extends section 40 ethanol credit through 2010; creates a biodiesel excise tax credit at $1.00 per gallon for soybeans and $50 cents per gallon for other feedstocks, effective through the end of 2005; defers 2.5 cents per gallon transfer and repeal of ethanol excise tax exemption to the highway bill.

Repeal of rail and barge 4.3 cent excise tax: Repeals 4.3 cent excise tax on diesel fuel used by rail and barge.

II. Reliability

Accelerated depreciation for natural gas gathering lines: Includes a seven-year cost recovery period for natural gas gathering lines and an AMT hold-harmless provision.

Accelerated depreciation for natural gas distribution lines: Includes a fifteen-year cost recovery period for natural gas distribution lines.

Accelerated depreciation for electric transmission lines: Includes a fifteen-year cost recovery period for new electric transmission lines (defined as 69 kilovolts and above by FERC).

Tax incentives for low-sulfur fuel production: Allows small refiners to expense 75% of the costs of making upgrades to produce low-sulfur fuel and a production credit of 5 cents per gallon up to 25% of the capital costs of those upgrades.

Definition of small refiner for depletion deductions: Re-defines the definition of a small refiner from one "who runs no more than 50,000 barrels on any given day" to "67,500 of average daily production."

Sales of transmission assets to implement FERC Order 2000: Allows taxpayers who sell their transmission assets as advocated by FERC Order 2000 to pay the resulting tax ratably over 8 years, but only if the taxpayer reinvests the proceeds in other utility property.

Nuclear Decommissioning costs: Repeals the current law "cost of service requirement, allows utilities to deduct pre-1984 contributions to a qualified fund (upon transfer of the fund the seller takes the deductions, not the purchaser), allows utilities to deduct contributions made after the estimated useful life of the plant, and clarifies that tax-exempt entities can transfer a qualified fund to taxable entities.

Treatment of income to co-ops in "open access transactions": Allows co-ops to exclude certain income derived from "open access" transactions (such as wheeling income from opening transmission or distribution facilities) from the 85-15 test and allows income from certain "loss load" transactions to be treated as income from members for purpose of meeting the 85-15 test. Includes a clarification that excluded income also includes income from open access distribution services but only with respect to electric energy furnished to end users served by distribution facilities other than those owned by the cooperative. This provision will protect co-ops from becoming taxable as a result of deregulation.

Pre-paid natural gas contracts: Sets a safe harbor for pre-paid gas contracts equal to historical usage and clarifies that section 141(d) does not apply to such contracts.

Tax incentives for clean and advanced clean coal: Includes several coal incentives.

1. Advanced clean coal.

a. 17.5% investment tax credit for construction of advanced clean coal power plants.

Eligible technologies include:

a. Advanced pulverized coal technology or atmospheric fluidized bed combustion technology;
b. Pressurized fluidized bed combustion technology;
c. Integrated gasification combined cycle technology; or
d. Other technology designated by the Secretary of Energy.

Plants must meet minimum capacity, thermal efficiency, and emissions standards.

Investment credits are subject to a nationwide 6,000 megawatt cap and are not tradable.

No double-dipping with accelerated depreciation on pollution control equipment, see below.

b. Accelerated depreciation. Five-year depreciation for Integrated Gasification Combined Cycle coal plants.

2. Clean Coal.

a. Accelerated depreciation. Five-year cost recovery period for post-1975 coal plants installing pollution control equipment. Three-year cost recovery period for pre-1976 coal plants installing pollution control equipment.

b. 15% investment tax credit. Nationwide 4,000 megawatt cap. No double dipping with accelerated depreciation provisions. Credits are not tradable.

3. Production of oil and gas from coal. See Section 29 coal incentives below.

Accelerated depreciation for certain high capacity natural gas transmission lines: Includes a seven-year cost recovery period for natural gas transmission lines 42 inches or more in diameter. This provision would include the proposed Alaska natural gas pipeline.

III. Production

Marginal well tax credit: Includes a $3 per barrel credit for production of crude oil or natural gas from marginal wells. The credit phases out as the price of oil or gas rises from $15 to $18 per barrel. The credit can be carried back for five years. Includes AMT hold harmless provision.

Suspend income limits on percentage depletion deductions: Suspends the 65% overall income limitation and the 100% net income limitation for small oil and gas producers through the end of 2004.

Delay rental payments: Allows delay rental payments to be amortized over two years, beginning on the date of enactment.

Geological and Geophysical (G&G) expenses: Allows G&G expenses to be amortized over two years, beginning on the date of enactment.

Tax incentives for production from nonconventional sources (section 29):

Extends the section 29 credit for certain existing facilities for four years at $3 per barrel or barrel equivalent.

Allows a $3 per barrel credit for four years for new facilities placed in service after date of enactment and before 1/1/07. No credits allowed after 12/31/09.

Includes a $3 per barrel credit for five years for landfill gas facilities placed in service after 6/30/98 and before 1/1/07 (facilities subject to New Source Performance standards receive a $2 credit per barrel).

Includes a $3 per barrel equivalent credit for *all* coke facilities for four years (for existing plants from the date of enactment, for new facilities from date placed in service). Any facilities placed in service after 12/31/92 and before 7/1/98 would continue to receive current law credit amount.

Includes a $3 per barrel equivalent credit for lignite facilities for four years.

Credit is capped at 200,000 cubic feet (35 barrels) produced per day for all projects eligible on the basis if the Act.

No tradable credits.

Adds section 29 to the list of credits treated as a general business credit.

Accepts three new qualifying fuels:

a. Coalmine methane;
b. Refined coal, including Fischer-Tropsch method (placed in service before 1/1/08; five year credit period); and
c. Compression of animal carcasses through thermal depolymerization.

Business credit AMT hold harmless: Allows taxpayers to take business credits against the AMT as well as against the regular tax.

Repeal AMT preference for intangible drilling costs (IDCs): Repeals the AMT preference for IDCs for independent producers.

Allow enhanced oil recovery credit against AMT: Allows the EOR credit to be taken against both AMT and the regular tax.

Allow enhanced eligibility for EOR credit for natural gas processing facilities re-injecting CO_2 for tertiary recovery: Expands the EOR credit to include natural gas processing facilities that re-inject CO_2 for tertiary recovery. The credit only applies to new facilities larger than 1 billion mcf per day. The proposed Alaska pipeline project would be included.

IV. Other items

Allows accelerated depreciation for energy projects on Indian lands.

Allows mutual funds to invest in publicly traded partnerships.

Reduces taxes on co-ops passing patronage dividends through to patrons.

Includes tax-exempt financing for certain energy-efficient developments on former "Brownfields" ("Green bonds"):

Suspends for two years duties on imported ceiling fans.

Suspends for duties on nuclear vessel heads and steam generators.