

113TH CONGRESS
1ST SESSION

H. R. 601

To direct the Secretary of the Interior to establish an annual production incentive fee with respect to Federal onshore and offshore lands that are subject to a lease for production of oil or natural gas under which production is not occurring, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2013

Mr. MARKEY (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of the Interior to establish an annual production incentive fee with respect to Federal onshore and offshore lands that are subject to a lease for production of oil or natural gas under which production is not occurring, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Permanent Repeal of
5 Oil Subsidies Act”.

1 SEC. 2. TABLE OF CONTENTS.

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—USE IT ACT

- Sec. 101. Short title.
Sec. 102. Production incentive fee.

TITLE II—DEFICIT REDUCTION THROUGH FAIR OIL ROYALTIES

- Sec. 201. Short title.
Sec. 202. Eligibility for new leases and the transfer of leases.
Sec. 203. Price thresholds for royalty suspension provisions.
Sec. 204. Repeal of royalty relief provisions.

TITLE III—OCS FACILITY INSPECTIONS

- Sec. 301. Short title.
Sec. 302. OCS facility inspection fees.

TITLE IV—REPEAL OF FOSSIL FUEL SUBSIDIES FOR LARGE OIL
COMPANIES

- Sec. 401. Short title.
Sec. 402. Amortization of geological and geophysical expenditures.
Sec. 403. Producing oil and gas from marginal wells.
Sec. 404. Enhanced oil recovery credit.
Sec. 405. Intangible drilling and development costs in the case of oil and gas
wells.
Sec. 406. Percentage depletion.
Sec. 407. Tertiary injectants.
Sec. 408. Passive activity losses and credits limited.
Sec. 409. Income attributable to domestic production activities.
Sec. 410. Prohibition on using last-in, first-out accounting for major integrated
oil companies.
Sec. 411. Modifications of foreign tax credit rules applicable to dual capacity
taxpayers.

3 TITLE I—USE IT ACT

4 SEC. 101. SHORT TITLE.

5 This title may be cited as the “United States Explo-
6 ration on Idle Tracts Act” or the “USE IT Act”.

7 SEC. 102. PRODUCTION INCENTIVE FEE.

8 (a) ESTABLISHMENT.—The Secretary of the Interior
9 shall, within 180 days after the date of enactment of this

1 Act, issue regulations to establish an annual production
2 incentive fee with respect to Federal onshore and offshore
3 lands that are subject to a lease for production of oil or
4 natural gas under which production is not occurring. Such
5 fee shall apply with respect to lands that are subject to
6 such a lease that is in effect on the date final regulations
7 are promulgated under this subsection or that is issued
8 thereafter.

9 (b) AMOUNT.—The amount of the fee shall be, for
10 each acre of land from which oil or natural gas is produced
11 for less than 90 days in a calendar year—

12 (1) in the case of onshore land—

13 (A) for each of the first 3 years of the
14 lease, \$4 per acre in 2011 dollars;

15 (B) for the fourth year of the lease, \$6 per
16 acre in 2011 dollars; and

17 (C) for the fifth year of the lease and each
18 year thereafter for which the lease is otherwise
19 in effect, \$8 per acre in 2011 dollars; and

20 (2) in the case of offshore land—

21 (A) for each of the third, fourth, and fifth
22 years of the lease, \$4 per acre in 2011 dollars;

23 (B) for the sixth year of the lease, \$6 per
24 acre in 2011 dollars; and

1 (C) for the seventh year of the lease and
2 each year thereafter for which the lease is oth-
3 erwise in effect, \$8 per acre in 2011 dollars.

4 (c) ASSESSMENT AND COLLECTION.—The Secretary
5 shall assess and collect the fee established under this sec-
6 tion.

7 (d) DEPOSIT.—Amounts received by the United
8 States as the fee under this section shall be deposited in
9 the general fund of the Treasury.

10 (e) REGULATIONS.—The Secretary of the Interior
11 may issue regulations to prevent evasion of the fee under
12 this section.

13 **TITLE II—DEFICIT REDUCTION** 14 **THROUGH FAIR OIL ROYALTIES**

15 **SEC. 201. SHORT TITLE.**

16 This title may be cited as the “Deficit Reduction
17 Through Fair Oil Royalties Act”.

18 **SEC. 202. ELIGIBILITY FOR NEW LEASES AND THE TRANS-** 19 **FER OF LEASES.**

20 (a) ISSUANCE OF NEW LEASES.—

21 (1) IN GENERAL.—The Secretary shall not
22 issue any new lease that authorizes the production
23 of oil or natural gas under the Outer Continental
24 Shelf Lands Act (43 U.S.C. 1331 et seq.) to a per-
25 son described in paragraph (2) unless the person has

1 renegotiated each covered lease with respect to which
2 the person is a lessee, to modify the payment re-
3 sponsibilities of the person to require the payment of
4 royalties if the price of oil and natural gas is greater
5 than or equal to the price thresholds described in
6 clauses (v) through (vii) of section 8(a)(3)(C) of the
7 Outer Continental Shelf Lands Act (43 U.S.C.
8 1337(a)(3)(C)).

9 (2) PERSONS DESCRIBED.—A person referred
10 to in paragraph (1) is a person that—

11 (A) is a lessee that—

12 (i) holds a covered lease on the date
13 on which the Secretary considers the
14 issuance of the new lease; or

15 (ii) was issued a covered lease before
16 the date of enactment of this Act, but
17 transferred the covered lease to another
18 person or entity (including a subsidiary or
19 affiliate of the lessee) after the date of en-
20 actment of this Act; or

21 (B) any other person that has any direct
22 or indirect interest in, or that derives any ben-
23 efit from, a covered lease.

24 (3) MULTIPLE LESSEES.—

1 (A) IN GENERAL.—For purposes of para-
2 graph (1), if there are multiple lessees that own
3 a share of a covered lease, the Secretary may
4 implement separate agreements with any lessee
5 with a share of the covered lease that modifies
6 the payment responsibilities with respect to the
7 share of the lessee to include price thresholds
8 that are equal to or less than the price thresh-
9 olds described in clauses (v) through (vii) of
10 section 8(a)(3)(C) of the Outer Continental
11 Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)).

12 (B) TREATMENT OF SHARE AS COVERED
13 LEASE.—Beginning on the effective date of an
14 agreement under subparagraph (A), any share
15 subject to the agreement shall not constitute a
16 covered lease with respect to any lessees that
17 entered into the agreement.

18 (b) TRANSFERS.—A lessee or any other person who
19 has any direct or indirect interest in, or who derives a
20 benefit from, a lease shall not be eligible to obtain by sale
21 or other transfer (including through a swap, spinoff, serv-
22 icing, or other agreement) any covered lease, the economic
23 benefit of any covered lease, or any other lease for the
24 production of oil or natural gas in the Gulf of Mexico

1 under the Outer Continental Shelf Lands Act (43 U.S.C.
2 1331 et seq.), unless the lessee or other person has—

3 (1) renegotiated each covered lease with respect
4 to which the lessee or person is a lessee, to modify
5 the payment responsibilities of the lessee or person
6 to include price thresholds that are equal to or less
7 than the price thresholds described in clauses (v)
8 through (vii) of section 8(a)(3)(C) of the Outer Con-
9 tinental Shelf Lands Act (43 U.S.C. 1337(a)(3)(C));
10 or

11 (2) entered into an agreement with the Sec-
12 retary to modify the terms of all covered leases of
13 the lessee or other person to include limitations on
14 royalty relief based on market prices that are equal
15 to or less than the price thresholds described in
16 clauses (v) through (vii) of section 8(a)(3)(C) of the
17 Outer Continental Shelf Lands Act (43 U.S.C.
18 1337(a)(3)(C)).

19 (c) USE OF AMOUNTS FOR DEFICIT REDUCTION.—
20 Notwithstanding any other provision of law, any amounts
21 received by the United States as rentals or royalties under
22 covered leases shall be deposited in the Treasury and used
23 for Federal budget deficit reduction or, if there is no Fed-
24 eral budget deficit, for reducing the Federal debt in such

1 manner as the Secretary of the Treasury considers appro-
2 priate.

3 (d) DEFINITIONS.—In this section—

4 (1) COVERED LEASE.—The term “covered
5 lease” means a lease for oil or gas production in the
6 Gulf of Mexico that is—

7 (A) in existence on the date of enactment
8 of this Act;

9 (B) issued by the Department of the Inte-
10 rior under section 304 of the Outer Continental
11 Shelf Deep Water Royalty Relief Act (43
12 U.S.C. 1337 note; Public Law 104–58); and

13 (C) not subject to limitations on royalty re-
14 lief based on market price that are equal to or
15 less than the price thresholds described in
16 clauses (v) through (vii) of section 8(a)(3)(C) of
17 the Outer Continental Shelf Lands Act (43
18 U.S.C. 1337(a)(3)(C)).

19 (2) LESSEE.—The term “lessee” includes any
20 person or other entity that controls, is controlled by,
21 or is in or under common control with, a lessee.

22 (3) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

1 **SEC. 203. PRICE THRESHOLDS FOR ROYALTY SUSPENSION**
2 **PROVISIONS.**

3 The Secretary of the Interior shall agree to a request
4 by any lessee to amend any lease issued for any Central
5 and Western Gulf of Mexico tract in the period of January
6 1, 1996, through November 28, 2000, to incorporate price
7 thresholds applicable to royalty suspension provisions, that
8 are equal to or less than the price thresholds described
9 in clauses (v) through (vii) of section 8(a)(3)(C) of the
10 Outer Continental Shelf Lands Act (43 U.S.C.
11 1337(a)(3)(C)). Any amended lease shall impose the new
12 or revised price thresholds effective October 1, 2013. Ex-
13 isting lease provisions shall prevail through September 30,
14 2013.

15 **SEC. 204. REPEAL OF ROYALTY RELIEF PROVISIONS.**

16 (a) REPEAL OF PROVISIONS OF ENERGY POLICY ACT
17 OF 2005.—The following provisions of the Energy Policy
18 Act of 2005 (Public Law 109–58) are repealed:

19 (1) Section 344 (42 U.S.C. 15904; relating to
20 incentives for natural gas production from deep wells
21 in shallow waters of the Gulf of Mexico).

22 (2) Section 345 (42 U.S.C. 15905; relating to
23 royalty relief for deep water production in the Gulf
24 of Mexico).

25 (b) REPEAL OF PROVISIONS RELATING TO PLAN-
26 NING AREAS OFFSHORE ALASKA.—Section 8(a)(3)(B) of

1 the Outer Continental Shelf Lands Act (43 U.S.C.
2 1337(a)(3)(B)) is amended by striking “and in the Plan-
3 ning Areas offshore Alaska”.

4 **TITLE III—OCS FACILITY**
5 **INSPECTIONS**

6 **SEC. 301. SHORT TITLE.**

7 This title may be cited as the “No Free Inspections
8 for Oil Companies Act”.

9 **SEC. 302. OCS FACILITY INSPECTION FEES.**

10 Section 22 of the Outer Continental Shelf Lands Act
11 (43 U.S.C. 1348) is amended by adding at the end of the
12 section the following:

13 “(g) INSPECTION FEES.—

14 “(1) ESTABLISHMENT.—The Secretary of the
15 Interior shall establish, by rule, and collect from the
16 operators of facilities subject to inspection under
17 subsection (c) nonrefundable fees for such inspec-
18 tions—

19 “(A) at an aggregate level equal to the
20 amount necessary to offset the annual expenses
21 of inspections of outer Continental Shelf facili-
22 ties (including mobile offshore drilling units) by
23 the Department of the Interior; and

1 “(B) using a schedule that reflects the dif-
2 ferences in complexity among the classes of fa-
3 cilities to be inspected.

4 “(2) OCEAN ENERGY ENFORCEMENT FUND.—
5 There is established in the Treasury a fund, to be
6 known as the ‘Ocean Energy Enforcement Fund’
7 (referred to in this subsection as the ‘Fund’), into
8 which shall be deposited amounts collected as fees
9 under paragraph (1) and which shall be available as
10 provided under paragraph (3).

11 “(3) AVAILABILITY OF FEES.—Notwithstanding
12 section 3302 of title 31, United States Code, all
13 amounts collected by the Secretary under this sec-
14 tion—

15 “(A) shall be credited as offsetting collec-
16 tions;

17 “(B) shall be available for expenditure only
18 for purposes of carrying out inspections of
19 outer Continental Shelf facilities (including mo-
20 bile offshore drilling units) and the administra-
21 tion of the inspection program under this sec-
22 tion;

23 “(C) shall be available only to the extent
24 provided for in advance in an appropriations
25 Act; and

1 “(D) shall remain available until expended.

2 “(4) ANNUAL REPORTS.—

3 “(A) IN GENERAL.—Not later than 60
4 days after the end of each fiscal year beginning
5 with fiscal year 2013, the Secretary shall sub-
6 mit to the Committee on Energy and Natural
7 Resources of the Senate and the Committee on
8 Natural Resources of the House of Representa-
9 tives a report on the operation of the Fund dur-
10 ing the fiscal year.

11 “(B) CONTENTS.—Each report shall in-
12 clude, for the fiscal year covered by the report,
13 the following:

14 “(i) A statement of the amounts de-
15 posited into the Fund.

16 “(ii) A description of the expenditures
17 made from the Fund for the fiscal year, in-
18 cluding the purpose of the expenditures.

19 “(iii) Recommendations for additional
20 authorities to fulfill the purpose of the
21 Fund.

22 “(iv) A statement of the balance re-
23 maining in the Fund at the end of the fis-
24 cal year.”.

1 **TITLE IV—REPEAL OF FOSSIL**
2 **FUEL SUBSIDIES FOR LARGE**
3 **OIL COMPANIES**

4 **SEC. 401. SHORT TITLE.**

5 This Act may be cited as the “End Big Oil Tax Sub-
6 sidies Act of 2013”.

7 **SEC. 402. AMORTIZATION OF GEOLOGICAL AND GEO-**
8 **PHYSICAL EXPENDITURES.**

9 (a) IN GENERAL.—Subparagraph (A) of section
10 167(h)(5) of the Internal Revenue Code of 1986 is amend-
11 ed by striking “major integrated oil company” and insert-
12 ing “covered large oil company”.

13 (b) COVERED LARGE OIL COMPANY.—Paragraph (5)
14 of section 167(h) of such Act is amended by redesignating
15 subparagraph (B) as subparagraph (C) and by inserting
16 after subparagraph (A) the following new subparagraph:

17 “(B) COVERED LARGE OIL COMPANY.—
18 For purposes of this paragraph, the term ‘cov-
19 ered large oil company’ means a taxpayer
20 which—

21 “(i) is a major integrated oil com-
22 pany, or

23 “(ii) has gross receipts in excess of
24 \$50,000,000 for the taxable year.

1 For purposes of clause (ii), all persons treated
2 as a single employer under subsections (a) and
3 (b) of section 52 shall be treated as 1 person.”.

4 (c) CONFORMING AMENDMENT.—The heading for
5 paragraph (5) of section 167(h) of such Code is amended
6 by inserting “AND OTHER LARGE TAXPAYERS”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts paid or incurred in tax-
9 able years beginning after December 31, 2012.

10 **SEC. 403. PRODUCING OIL AND GAS FROM MARGINAL**
11 **WELLS.**

12 (a) IN GENERAL.—Section 45I of the Internal Rev-
13 enue Code of 1986 is amended by adding at the end the
14 following new subsection:

15 “(e) EXCEPTION FOR TAXPAYER WITH GROSS RE-
16 CEIPTS IN EXCESS OF \$50,000,000.—

17 “(1) IN GENERAL.—Subsection (a) shall not
18 apply to any taxpayer whose aggregate gross re-
19 ceipts for the taxable year are in excess of
20 \$50,000,000.

21 “(2) AGGREGATION RULE.—For purposes of
22 paragraph (1), all persons treated as a single em-
23 ployer under subsections (a) and (b) of section 52
24 shall be treated as 1 person.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to credits determined for taxable
3 years beginning after December 31, 2012.

4 **SEC. 404. ENHANCED OIL RECOVERY CREDIT.**

5 (a) IN GENERAL.—Section 43 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new subsection:

8 “(f) EXCEPTION FOR TAXPAYER WITH GROSS RE-
9 CEIPTS IN EXCESS OF \$50,000,000.—

10 “(1) IN GENERAL.—Subsection (a) shall not
11 apply to any taxpayer whose aggregate gross re-
12 ceipts for the taxable year are in excess of
13 \$50,000,000.

14 “(2) AGGREGATION RULE.—For purposes of
15 paragraph (1), all persons treated as a single em-
16 ployer under subsections (a) and (b) of section 52
17 shall be treated as 1 person.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to amounts paid or incurred in tax-
20 able years beginning after December 31, 2012.

21 **SEC. 405. INTANGIBLE DRILLING AND DEVELOPMENT**
22 **COSTS IN THE CASE OF OIL AND GAS WELLS.**

23 (a) IN GENERAL.—Subsection (c) of section 263 of
24 the Internal Revenue Code of 1986 is amended by adding
25 at the end the following new sentence: “This subsection

1 shall not apply to amounts paid or incurred by a taxpayer
2 in any taxable year in which such taxpayer has aggregate
3 gross receipts for the taxable year in excess of
4 \$50,000,000, determined by deeming all persons treated
5 as a single employer under subsections (a) and (b) of sec-
6 tion 52 as 1 person.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to amounts paid or incurred in tax-
9 able years beginning after December 31, 2012.

10 **SEC. 406. PERCENTAGE DEPLETION.**

11 (a) IN GENERAL.—Section 613A of the Internal Rev-
12 enue Code of 1986 is amended by adding at the end the
13 following new subsection:

14 “(f) EXCEPTION FOR TAXPAYER WITH GROSS RE-
15 CEIPTS IN EXCESS OF \$50,000,000.—

16 “(1) IN GENERAL.—This section and section
17 611 shall not apply to any taxpayer which has ag-
18 gregate gross receipts for the taxable year in excess
19 of \$50,000,000.

20 “(2) AGGREGATION RULE.—For purposes of
21 paragraph (1), all persons treated as a single em-
22 ployer under subsections (a) and (b) of section 52
23 shall be treated as 1 person.”.

1 (b) CONFORMING AMENDMENT.—Section 613A(e)(1)
2 of such Code is amended by striking “subsection (d)” and
3 inserting “subsections (d) and (f)”.

4 (c) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to taxable years beginning after
6 December 31, 2012.

7 **SEC. 407. TERTIARY INJECTANTS.**

8 (a) IN GENERAL.—Section 193 of the Internal Rev-
9 enue Code of 1986 is amended by adding at the end the
10 following new subsection:

11 “(d) EXCEPTION FOR TAXPAYER WITH GROSS RE-
12 CEIPTS IN EXCESS OF \$50,000,000.—

13 “(1) IN GENERAL.—Subsection (a) shall not
14 apply to any taxpayer which has aggregate gross re-
15 ceipts for the taxable year in excess of \$50,000,000.

16 “(2) AGGREGATION RULE.—For purposes of
17 paragraph (1), all persons treated as a single em-
18 ployer under subsections (a) and (b) of section 52
19 shall be treated as 1 person.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to expenses incurred after Decem-
22 ber 31, 2012.

1 **SEC. 408. PASSIVE ACTIVITY LOSSES AND CREDITS LIM-**
2 **ITED.**

3 (a) RULES RELATING TO WORKING INTERESTS IN
4 OIL AND GAS PROPERTY.—Paragraph (3) of section
5 469(c) of the Internal Revenue Code of 1986 is amended
6 by adding at the end the following:

7 “(C) EXCEPTION FOR TAXPAYER WITH
8 GROSS RECEIPTS IN EXCESS OF \$50,000,000.—

9 “(i) IN GENERAL.—Subparagraph (A)
10 shall not apply to any taxpayer which has
11 aggregate gross receipts for the taxable
12 year in excess of \$50,000,000.

13 “(ii) AGGREGATION RULE.—For pur-
14 poses of clause (i), all persons treated as
15 a single employer under subsections (a)
16 and (b) of section 52 shall be treated as 1
17 person.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2012.

21 **SEC. 409. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
22 **TION ACTIVITIES.**

23 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
24 tion 199(c) of the Internal Revenue Code of 1986 is
25 amended by adding at the end the following new subpara-
26 graph:

1 “(E) SPECIAL RULE FOR CERTAIN OIL
2 AND GAS INCOME.—In the case of any taxpayer
3 who is a major integrated oil company (as de-
4 fined in section 167(h)) for the taxable year,
5 the term ‘domestic production gross receipts’
6 shall not include gross receipts from the pro-
7 duction, transportation, or distribution of oil,
8 natural gas, or any primary product (within the
9 meaning of subsection (d)(9)) thereof.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to taxable years beginning after
12 December 31, 2012.

13 **SEC. 410. PROHIBITION ON USING LAST-IN, FIRST-OUT AC-**
14 **COUNTING FOR MAJOR INTEGRATED OIL**
15 **COMPANIES.**

16 (a) IN GENERAL.—Section 472 of the Internal Rev-
17 enue Code of 1986 is amended by adding at the end the
18 following new subsection:

19 “(h) MAJOR INTEGRATED OIL COMPANIES.—Not-
20 withstanding any other provision of this section, a major
21 integrated oil company (as defined in section 167(h)) may
22 not use the method provided in subsection (b) in
23 inventorying of any goods.”.

24 (b) EFFECTIVE DATE AND SPECIAL RULE.—

1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall apply to taxable years beginning
3 after December 31, 2012.

4 (2) CHANGE IN METHOD OF ACCOUNTING.—In
5 the case of any taxpayer required by the amendment
6 made by this section to change its method of ac-
7 counting for its first taxable year beginning after the
8 date of the enactment of this Act—

9 (A) such change shall be treated as initi-
10 ated by the taxpayer,

11 (B) such change shall be treated as made
12 with the consent of the Secretary of the Treas-
13 ury, and

14 (C) the net amount of the adjustments re-
15 quired to be taken into account by the taxpayer
16 under section 481 of the Internal Revenue Code
17 of 1986 shall be taken into account ratably over
18 a period (not greater than 8 taxable years) be-
19 ginning with such first taxable year.

20 **SEC. 411. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**

21 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

22 (a) IN GENERAL.—Section 901 of the Internal Rev-
23 enue Code of 1986 is amended by redesignating subsection
24 (n) as subsection (o) and by inserting after subsection (m)
25 the following new subsection:

1 “(n) SPECIAL RULES RELATING TO MAJOR INTE-
2 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
3 TAXPAYERS.—

4 “(1) GENERAL RULE.—Notwithstanding any
5 other provision of this chapter, any amount paid or
6 accrued by a dual capacity taxpayer which is a
7 major integrated oil company (as defined in section
8 167(h)) to a foreign country or possession of the
9 United States for any period shall not be considered
10 a tax—

11 “(A) if, for such period, the foreign coun-
12 try or possession does not impose a generally
13 applicable income tax, or

14 “(B) to the extent such amount exceeds
15 the amount (determined in accordance with reg-
16 ulations) which—

17 “(i) is paid by such dual capacity tax-
18 payer pursuant to the generally applicable
19 income tax imposed by the country or pos-
20 session, or

21 “(ii) would be paid if the generally ap-
22 plicable income tax imposed by the country
23 or possession were applicable to such dual
24 capacity taxpayer.

1 Nothing in this paragraph shall be construed to
2 imply the proper treatment of any such amount not
3 in excess of the amount determined under subpara-
4 graph (B).

5 “(2) DUAL CAPACITY TAXPAYER.—For pur-
6 poses of this subsection, the term ‘dual capacity tax-
7 payer’ means, with respect to any foreign country or
8 possession of the United States, a person who—

9 “(A) is subject to a levy of such country or
10 possession, and

11 “(B) receives (or will receive) directly or
12 indirectly a specific economic benefit (as deter-
13 mined in accordance with regulations) from
14 such country or possession.

15 “(3) GENERALLY APPLICABLE INCOME TAX.—
16 For purposes of this subsection—

17 “(A) IN GENERAL.—The term ‘generally
18 applicable income tax’ means an income tax (or
19 a series of income taxes) which is generally im-
20 posed under the laws of a foreign country or
21 possession on income derived from the conduct
22 of a trade or business within such country or
23 possession.

1 “(B) EXCEPTIONS.—Such term shall not
2 include a tax unless it has substantial applica-
3 tion, by its terms and in practice, to—

4 “(i) persons who are not dual capacity
5 taxpayers, and

6 “(ii) persons who are citizens or resi-
7 dents of the foreign country or posses-
8 sion.”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxes paid or accrued in
12 taxable years beginning after December 31, 2012.

13 (2) CONTRARY TREATY OBLIGATIONS
14 UPHELD.—The amendments made by this section
15 shall not apply to the extent contrary to any treaty
16 obligation of the United States.

○