

118TH CONGRESS  
1ST SESSION

# S. 408

To amend the Internal Revenue Code of 1986 to impose a windfall profits excise tax on crude oil and to rebate the tax collected back to individual taxpayers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Mr. WHITEHOUSE (for himself, Mr. PADILLA, Mr. MERKLEY, Mr. BROWN, Mr. CASEY, Ms. WARREN, Mr. MARKEY, Mr. BLUMENTHAL, Mr. BENNET, Mr. MURPHY, Mr. KAINE, Mr. WARNOCK, Ms. BALDWIN, Mr. BOOKER, Ms. STABENOW, Mr. SANDERS, Mr. REED, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to impose a windfall profits excise tax on crude oil and to rebate the tax collected back to individual taxpayers, 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 “Big Oil Windfall Prof-  
5 its Tax Act”.

1 **SEC. 2. WINDFALL PROFITS TAX.**

2 (a) IN GENERAL.—Subtitle E of the Internal Rev-  
 3 enue Code of 1986 is amended by adding at the end there-  
 4 of the following new chapter:

5 **“CHAPTER 56—WINDFALL PROFITS ON**  
 6 **CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Definitions and special rules.

7 **“SEC. 5896. IMPOSITION OF TAX.**

8 “(a) IN GENERAL.—In addition to any other tax im-  
 9 posed under this title, in each calendar quarter there is  
 10 hereby imposed on any covered taxpayer an excise tax at  
 11 the rate determined under subsection (b) on—

12 “(1) each barrel of taxable crude oil extracted  
 13 by the taxpayer within the United States and re-  
 14 moved from the property of such taxpayer during  
 15 the calendar quarter, and

16 “(2) each barrel of taxable crude oil entered  
 17 into the United States during the calendar quarter  
 18 by the taxpayer for consumption, use, or  
 19 warehousing.

20 “(b) RATE OF TAX.—

21 “(1) IN GENERAL.—The rate of tax imposed by  
 22 this section on any barrel of taxable crude oil for  
 23 any calendar quarter is the product of—

24 “(A) 50 percent, and

1 “(B) the excess (if any) of—

2 “(i) the average price of a barrel of  
3 Brent crude oil over the covered calendar  
4 quarter, over

5 “(ii) the average price of a barrel of  
6 Brent crude oil over the period beginning  
7 on January 1, 2015, and ending on De-  
8 cember 31, 2019.

9 “(2) INFLATION ADJUSTMENT.—

10 “(A) IN GENERAL.—In the case of a cal-  
11 endar quarter beginning in any taxable year be-  
12 ginning after 2022, the amount determined  
13 under paragraph (1)(B)(ii) shall be increased  
14 by an amount equal to—

15 “(i) such dollar amount, multiplied by

16 “(ii) the cost-of-living adjustment de-  
17 termined under section 1(f)(3) for the cal-  
18 endar year in which the taxable year be-  
19 gins, determined by substituting ‘2021’ for  
20 ‘2016’ in subparagraph (A)(ii) thereof.

21 “(B) ROUNDING.—If any dollar amount,  
22 after being increased under subparagraph (A),  
23 is not a multiple of \$0.50, such dollar amount  
24 shall be rounded to the next lowest multiple of  
25 \$0.01.

1       “(c) FRACTIONAL PART OF BARREL.—In the case of  
 2 a fraction of a barrel, the tax imposed by subsection (a)  
 3 shall be the same fraction of the amount of such tax im-  
 4 posed on the whole barrel.

5 **“SEC. 5897. DEFINITIONS AND SPECIAL RULES.**

6       “(a) DEFINITIONS.—For purposes of this chapter—

7           “(1) COVERED TAXPAYER.—

8               “(A) IN GENERAL.—The term ‘covered  
 9 taxpayer’ means, with respect to any calendar  
 10 quarter, any taxpayer if—

11                   “(i) the average daily number of bar-  
 12 rels of taxable crude oil extracted and im-  
 13 ported by the taxpayer for calendar year  
 14 2019 exceeded 300,000 barrels, or

15                   “(ii) the average daily number of bar-  
 16 rels of taxable crude oil extracted and im-  
 17 ported by the taxpayer for the calendar  
 18 quarter exceeds 300,000.

19           “(B) AGGREGATION RULES.—All persons  
 20 treated as a single employer under subsection  
 21 (a) or (b) of section 52 or subsection (m) or (o)  
 22 of section 414 shall be treated as one person for  
 23 purposes of paragraph (1).

1           “(2) TAXABLE CRUDE OIL.—The term ‘taxable  
2           crude oil’ includes crude oil, crude oil condensates,  
3           and natural gasoline.

4           “(3) BARREL.—The term ‘barrel’ means 42  
5           United States gallons.

6           “(4) UNITED STATES.—The term ‘United  
7           States’ has the same meaning given such term under  
8           section 4612.

9           “(b) WITHHOLDING AND DEPOSIT OF TAX.—The  
10          Secretary shall provide such rules as are necessary for the  
11          withholding and deposit of the tax imposed under section  
12          5896 on any taxable crude oil.

13          “(c) RECORDS AND INFORMATION.—Each taxpayer  
14          liable for tax under section 5896 shall keep such records,  
15          make such returns, and furnish such information (to the  
16          Secretary and to other persons having an interest in the  
17          taxable crude oil) with respect to such oil as the Secretary  
18          may by regulations prescribe.

19          “(d) RETURN OF WINDFALL PROFIT TAX.—The Sec-  
20          retary shall provide for the filing and the time of such  
21          filing of the return of the tax imposed under section 5896.

22          “(e) REGULATIONS.—The Secretary shall prescribe  
23          such regulations as may be necessary or appropriate to  
24          carry out the purposes of this chapter.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
2 for subtitle E of the Internal Revenue Code of 1986 is  
3 amended by adding at the end the following new item:

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL”.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by  
6 this section shall apply to crude oil removed or en-  
7 tered after December 31, 2021, in calendar quarters  
8 ending after such date.

9 (2) SPECIAL RULE FOR QUARTERS DURING  
10 2022.—In the case of any calendar quarter ending in  
11 calendar year 2022, the tax imposed under section  
12 5896 shall not be due before March 31, 2023.

13 **SEC. 3. GASOLINE PRICE REBATES.**

14 (a) IN GENERAL.—Subchapter B of chapter 65 of the  
15 Internal Revenue Code of 1986 is amended by adding at  
16 the end the following new section:

17 **“SEC. 6434. GASOLINE PRICE REBATES.**

18 “(a) IN GENERAL.—In the case of an eligible indi-  
19 vidual, there shall be allowed as a credit against the tax  
20 imposed by subtitle A for each taxable year beginning  
21 after December 31, 2021, an amount equal to the sum  
22 of the gasoline price rebate amount for calendar quarters  
23 beginning in such taxable year.

24 “(b) GASOLINE PRICE REBATE AMOUNT.—For pur-  
25 poses of this section—

1           “(1) IN GENERAL.—The term ‘gasoline price  
2 rebate amount’ means, with respect to any taxpayer  
3 for any calendar quarter beginning in a taxable year,  
4 an amount determined by the Secretary not later  
5 than 30 days after the end of such calendar quarter  
6 taking into account the number of eligible individ-  
7 uals and the amount of revenues in the Protect Con-  
8 sumers from Gas Hikes Fund resulting from the tax  
9 imposed by section 5896 for the preceding calendar  
10 quarter.

11           “(2) SPECIAL RULE FOR JOINT RETURNS.—In  
12 the case of an eligible individual filing a joint return,  
13 the gasoline price rebate amount shall be 150 per-  
14 cent of the amount determined under paragraph (1)  
15 with respect to other taxpayers.

16           “(3) LIMITATION BASED ON ADJUSTED GROSS  
17 INCOME.—The amount of the credit allowed by sub-  
18 section (a) (determined without regard to this sub-  
19 section and subsection (e)) shall be reduced (but not  
20 below zero) by 5 percent of so much of the eligible  
21 individual’s adjusted gross income as exceeds—

22                   “(A) \$150,000 in the case of a joint re-  
23 turn,

24                   “(B) \$112,500 in the case of a head of  
25 household, and

1                   “(C) \$75,000 in any other case.

2           “(c) ELIGIBLE INDIVIDUAL.—For purposes of this  
3 section, the term ‘eligible individual’ means any individual  
4 other than—

5                   “(1) any nonresident alien individual,

6                   “(2) any individual who is a dependent of an-  
7 other taxpayer for a taxable year beginning in the  
8 calendar year in which the individual’s taxable year  
9 begins, and

10                   “(3) an estate or trust.

11           “(d) DEFINITIONS AND SPECIAL RULES.—

12                   “(1) DEPENDENT DEFINED.—For purposes of  
13 this section, the term ‘dependent’ has the meaning  
14 given such term by section 152.

15                   “(2) IDENTIFICATION NUMBER REQUIRE-  
16 MENT.—

17                   “(A) IN GENERAL.—In the case of a re-  
18 turn other than a joint return, the gasoline  
19 price rebate amount in subsection (b)(1) shall  
20 be treated as being zero unless the taxpayer in-  
21 cludes the valid identification number of the  
22 taxpayer on the return of tax for the taxable  
23 year.



1           “(B) JOINT RETURNS.—In the case of a  
2 joint return, the gasoline price rebate amount  
3 in subsection (b)(1) shall be treated as being—

4           “(i) 50 percent of the amount other-  
5 wise determined without regard to this  
6 paragraph if the valid identification num-  
7 ber of only 1 spouse is included on the re-  
8 turn of tax for the taxable year, and

9           “(ii) zero if the valid identification  
10 number of neither spouse is so included.

11           “(C) VALID IDENTIFICATION NUMBER.—  
12 For purposes of this paragraph, the term ‘valid  
13 identification number’ means a social security  
14 number issued to an individual by the Social  
15 Security Administration on or before the due  
16 date for filing the return for the taxable year.

17           “(D) SPECIAL RULE FOR MEMBERS OF  
18 THE ARMED FORCES.—Subparagraph (B) shall  
19 not apply in the case where at least 1 spouse  
20 was a member of the Armed Forces of the  
21 United States at any time during the taxable  
22 year and the valid identification number of at  
23 least 1 spouse is included on the return of tax  
24 for the taxable year.

1           “(E) COORDINATION WITH CERTAIN AD-  
2           VANCE PAYMENTS.—In the case of any payment  
3           determined pursuant to subsection (f)(6), a  
4           valid identification number shall be treated for  
5           purposes of this paragraph as included on the  
6           taxpayer’s return of tax if such valid identifica-  
7           tion number is available to the Secretary as de-  
8           scribed in such subsection.

9           “(F) MATHEMATICAL OR CLERICAL ERROR  
10          AUTHORITY.—Any omission of a correct valid  
11          identification number required under this para-  
12          graph shall be treated as a mathematical or  
13          clerical error for purposes of applying section  
14          6213(g)(2) to such omission.

15          “(3) CREDIT TREATED AS REFUNDABLE.—The  
16          credit allowed by subsection (a) shall be treated as  
17          allowed by subpart C of part IV of subchapter A of  
18          chapter 1.

19          “(e) REGULATIONS.—The Secretary shall prescribe  
20          such regulations or other guidance as may be necessary  
21          or appropriate to carry out the purposes of this section.

22          “(f) OUTREACH.—The Secretary shall carry out a ro-  
23          bust and comprehensive outreach program to ensure that  
24          all taxpayers learn of their eligibility for the credits al-

1 lowed under this section and are provided assistance in  
2 claiming such credits.”.

3 (b) TREATMENT OF CERTAIN POSSESSIONS.—

4 (1) PAYMENTS TO POSSESSIONS WITH MIRROR  
5 CODE TAX SYSTEMS.—The Secretary of the Treas-  
6 ury shall pay to each possession of the United States  
7 which has a mirror code tax system amounts equal  
8 to the loss (if any) to that possession by reason of  
9 the amendments made by this section. Such  
10 amounts shall be determined by the Secretary of the  
11 Treasury based on information provided by the gov-  
12 ernment of the respective possession.

13 (2) PAYMENTS TO OTHER POSSESSIONS.—The  
14 Secretary of the Treasury shall pay to each posses-  
15 sion of the United States which does not have a mir-  
16 ror code tax system amounts estimated by the Sec-  
17 retary of the Treasury as being equal to the aggre-  
18 gate benefits (if any) that would have been provided  
19 to residents of such possession by reason of the  
20 amendments made by this section if a mirror code  
21 tax system had been in effect in such possession.  
22 The preceding sentence shall not apply unless the re-  
23 spective possession has a plan, which has been ap-  
24 proved by the Secretary of the Treasury, under

1       which such possession will promptly distribute such  
2       payments to its residents.

3               (3) INCLUSION OF ADMINISTRATIVE EX-  
4       PENSES.—The Secretary of the Treasury shall pay  
5       to each possession of the United States to which the  
6       Secretary makes a payment under paragraph (1) or  
7       (2) an amount equal to the increase (if any) of the  
8       administrative expenses of such possession—

9               (A) in the case of a possession described in  
10       paragraph (1), by reason of the amendments  
11       made by this section, and

12              (B) in the case of a possession described in  
13       paragraph (2), by reason of carrying out the  
14       plan described in such paragraph, or  
15       the amount described in subparagraph (A) shall be  
16       determined by the Secretary of the Treasury based  
17       on information provided by the government of the  
18       respective possession.

19              (4) COORDINATION WITH CREDIT ALLOWED  
20       AGAINST UNITED STATES INCOME TAXES.—No cred-  
21       it shall be allowed against United States income  
22       taxes under section 6434 of the Internal Revenue  
23       Code of 1986 (as added by this section) to any per-  
24       son—

1 (A) to whom a credit is allowed against  
2 taxes imposed by the possession by reason of  
3 the amendments made by this section, or

4 (B) who is eligible for a payment under a  
5 plan described in paragraph (2).

6 (5) MIRROR CODE TAX SYSTEM.—For purposes  
7 of this subsection, the term “mirror code tax sys-  
8 tem” means, with respect to any possession of the  
9 United States, the income tax system of such posses-  
10 sion if the income tax liability of the residents of  
11 such possession under such system is determined by  
12 reference to the income tax laws of the United  
13 States as if such possession were the United States.

14 (6) TREATMENT OF PAYMENTS.—For purposes  
15 of section 1324 of title 31, United States Code, the  
16 payments under this subsection shall be treated in  
17 the same manner as a refund due from a credit pro-  
18 vision referred to in subsection (b)(2) of such sec-  
19 tion.

20 (c) ADMINISTRATIVE PROVISIONS.—

21 (1) DEFINITION OF DEFICIENCY.—Section  
22 6211(b)(4)(A) of the Internal Revenue Code of 1986  
23 is amended by striking “and 6433” and inserting  
24 “6433, and 6434,”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Paragraph (2) of section 1324(b) of  
 2 title 31, United States Code, is amended by in-  
 3 serting “6434,” after “6433,”.

4 (B) The table of sections for subchapter B  
 5 of chapter 65 of the Internal Revenue Code of  
 6 1986 is amended by adding at the end the fol-  
 7 lowing new item:

“Sec. 6434. Gasoline price rebates.”.

8 (d) SPECIAL RULES FOR 2022.—In the case of tax-  
 9 able years ending during calendar year 2022, the Sec-  
 10 retary shall provide any refunds due to the credit allowed  
 11 under section 6434 of the Internal Revenue Code of 1986  
 12 (as added by this section) not later than June 30, 2023.

13 **SEC. 4. PROTECT CONSUMERS FROM GAS PRICE HIKES**  
 14 **FUND.**

15 (a) IN GENERAL.—Subchapter A of chapter 98 of the  
 16 Internal Revenue Code of 1986 is amended by adding at  
 17 the end the following new section:

18 **“SEC. 9512. PROTECT CONSUMERS FROM GAS PRICE HIKES**  
 19 **FUND.**

20 “(a) ESTABLISHMENT AND FUNDING.—There is  
 21 hereby established in the Treasury of the United States  
 22 a trust fund to be referred to as the ‘Protect Consumers  
 23 from Gas Hikes Fund’, consisting of such amounts as may  
 24 be appropriated or credited to such trust fund as provided  
 25 for in this section and section 9602(b).

1       “(b) TRANSFERS TO THE PROTECT CONSUMERS  
2 FROM GAS PRICE HIKES FUND.—There are hereby ap-  
3 propriated to the Protect Consumers from Gas Hikes  
4 Fund amounts equivalent to the taxes received in the  
5 Treasury under section 5896.

6       “(c) USE OF FUNDS.—The Secretary shall pay from  
7 time to time from the Protect Consumers from Gas Price  
8 Hikes Fund to the general fund of the Treasury amounts  
9 equal to the amounts of refunds provided under section  
10 6434.”.

11       (b) CLERICAL AMENDMENT.—The table of sections  
12 for subchapter A of chapter 98 of such Code is amended  
13 by adding at the end the following new item:

“Sec. 9512. Protect Consumers from Gas Price Hikes Fund.”.

○