

117TH CONGRESS
2D SESSION

S. 3802

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.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 7), 2022

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

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 PROFITS ON CRUDE OIL.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to crude oil removed or entered
 6 after the date of the enactment of this Act, in calendar
 7 quarters ending after such date.

8 **SEC. 3. GASOLINE PRICE REBATES.**

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

12 **“SEC. 6433. GASOLINE PRICE REBATES.**

13 “(a) IN GENERAL.—In the case of an eligible indi-
 14 vidual, there shall be allowed as a credit against the tax
 15 imposed by subtitle A for each taxable year beginning
 16 after the date of the enactment of the Big Oil Windfall
 17 Profits Tax Act, an amount equal to the sum of the gaso-
 18 line price rebate amount for calendar quarters beginning
 19 in such taxable year.

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

22 “(1) IN GENERAL.—The term ‘gasoline price
 23 rebate amount’ means, with respect to any taxpayer
 24 for any calendar quarter beginning in a taxable year,
 25 an amount determined by the Secretary not later

1 than 30 days after the end of such calendar quarter
 2 taking into account the number of eligible individ-
 3 uals and the amount of revenues in the Protect Con-
 4 sumers from Gas Hikes Fund resulting from the tax
 5 imposed by section 5896 for the preceding calendar
 6 quarter.

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

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

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

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

22 “(C) \$75,000 in any other case.

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

1 “(1) any nonresident alien individual,

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

6 “(3) an estate or trust.

7 “(d) DEFINITIONS AND SPECIAL RULES.—

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

11 “(2) IDENTIFICATION NUMBER REQUIRE-
12 MENT.—

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

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

23 “(i) 50 percent of the amount other-
24 wise determined without regard to this
25 paragraph if the valid identification num-

ber of only 1 spouse is included on the return of tax for the taxable year, and

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

“(C) VALID IDENTIFICATION NUMBER.—

For purposes of this paragraph, the term ‘valid identification number’ means a social security number issued to an individual by the Social Security Administration on or before the due date for filing the return for the taxable year.

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

“(E) COORDINATION WITH CERTAIN ADVANCE PAYMENTS.—In the case of any payment determined pursuant to subsection (f)(6), a valid identification number shall be treated for purposes of this paragraph as included on the taxpayer’s return of tax if such valid identifica-

1 tion number is available to the Secretary as de-
2 scribed in such subsection.

3 “(F) MATHEMATICAL OR CLERICAL ERROR
4 AUTHORITY.—Any omission of a correct valid
5 identification number required under this para-
6 graph shall be treated as a mathematical or
7 clerical error for purposes of applying section
8 6213(g)(2) to such omission.

9 “(3) CREDIT TREATED AS REFUNDABLE.—The
10 credit allowed by subsection (a) shall be treated as
11 allowed by subpart C of part IV of subchapter A of
12 chapter 1.

13 “(e) COORDINATION WITH ADVANCE REFUNDS OF
14 CREDIT.—

15 “(1) REDUCTION OF REFUNDABLE CREDIT.—
16 The amount of the credit which would (but for this
17 paragraph) be allowable under subsection (a) for any
18 taxable year shall be reduced (but not below zero) by
19 the aggregate refunds and credits made or allowed
20 to the taxpayer (or, except as otherwise provided by
21 the Secretary, any dependent of the taxpayer) under
22 subsection (f) for such taxable year. Any failure to
23 so reduce the credit shall be treated as arising out
24 of a mathematical or clerical error and assessed ac-
25 cording to section 6213(b)(1).

1 “(2) JOINT RETURNS.—Except as otherwise
2 provided by the Secretary, in the case of a refund
3 or credit made or allowed under subsection (f) with
4 respect to a joint return, half of such refund or cred-
5 it shall be treated as having been made or allowed
6 to each individual filing such return.

7 “(f) ADVANCE REFUNDS AND CREDITS.—

8 “(1) IN GENERAL.—Subject to paragraphs (5)
9 and (6), for any rebate taxable year, each individual
10 who was an eligible individual for the applicable tax-
11 able year shall be treated as having made a payment
12 against the tax imposed by chapter 1 for such appli-
13 cable taxable year in an amount equal to advance re-
14 fund amount for such rebate taxable year.

15 “(2) ADVANCE REFUND AMOUNT.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), the advance refund amount for any
18 rebate taxable year is the amount that would be
19 allowed as a credit under this section for the
20 applicable taxable year if this section (other
21 than subsection (e) and this subsection) were
22 applied to such applicable taxable year (without
23 regard to any effective date) using the gasoline
24 price rebate amount for the refund taxable
25 year.

1 “(B) TREATMENT OF DECEASED INDIVID-
2 UALS.—For purposes of determining the ad-
3 vanced refund amount—

4 “(i) any individual who was deceased
5 before the first day of the rebate taxable
6 year shall be treated for purposes of apply-
7 ing subsection (d)(2) in the same manner
8 as if the valid identification number of
9 such person was not included on the return
10 of tax for the applicable taxable year (ex-
11 cept that subparagraph (D) thereof shall
12 not apply), and

13 “(ii) notwithstanding clause (i), in the
14 case of a joint return with respect to which
15 only 1 spouse is deceased before the first
16 day of the rebate taxable year, such de-
17 ceased spouse was a member of the Armed
18 Forces of the United States at any time
19 during the applicable taxable year, and the
20 valid identification number of such de-
21 ceased spouse is included on the return of
22 tax for the applicable taxable year, the
23 valid identification number of 1 (and only
24 1) spouse shall be treated as included on
25 the return of tax for the applicable taxable

1 year for purposes of applying subsection
2 (d)(2)(B) with respect to such joint return.

3 “(3) TIMING AND MANNER OF PAYMENTS.—

4 The Secretary shall, subject to the provisions of this
5 title, refund or credit any overpayment attributable
6 to this section and determined with respect to any
7 calendar quarter not later than 90 days after the
8 end of such calendar quarter. No refund or credit
9 shall be made or allowed under this subsection with
10 respect to any applicable taxable year after the last
11 day of the rebate taxable year.

12 “(4) NO INTEREST.—No interest shall be al-
13 lowed on any overpayment attributable to this sub-
14 section.

15 “(5) APPLICATION TO INDIVIDUALS WHO HAVE
16 FILED A RETURN OF TAX FOR THE YEAR AFTER
17 THE APPLICABLE TAXABLE YEAR.—

18 “(A) APPLICATION TO RETURNS FILED AT
19 TIME OF INITIAL DETERMINATION.—If, at the
20 time of any determination made pursuant to
21 paragraph (3), the individual referred to in
22 paragraph (1) has filed a return of tax for the
23 individual’s first taxable year beginning after
24 the applicable taxable year, paragraph (1) shall
25 be applied with respect to such individual by

1 substituting ‘taxable year following the applica-
2 ble taxable year’ for ‘applicable taxable year’.

3 “(B) ADDITIONAL PAYMENT.—

4 “(i) IN GENERAL.—In the case of any
5 individual who files, before the additional
6 payment determination date, a return of
7 tax for such individual’s first taxable year
8 beginning after the applicable taxable year,
9 the Secretary shall make a payment (in ad-
10 dition to any payment made under para-
11 graph (1)) to such individual equal to the
12 excess (if any) of—

13 “(I) the amount which would be
14 determined under paragraph (1)
15 (after the application of subparagraph
16 (A)) by applying paragraph (1) as of
17 the additional payment determination
18 date, over

19 “(II) the amount of any payment
20 made with respect to such individual
21 under paragraph (1).

22 “(ii) ADDITIONAL PAYMENT DETER-
23 MINATION DATE.—The term ‘additional
24 payment determination date’ means the
25 earlier of—

1 “(I) the date which is 90 days
2 after the date specified in section
3 6072(a) with respect to returns for
4 the taxable year following the applica-
5 ble taxable year (determined after
6 taking into account any period dis-
7 regarded under section 7508A if such
8 disregard applies to substantially all
9 returns for such taxable year), or
10 “(II) September 1 of the cal-
11 endar year following the applicable
12 taxable year.

13 “(6) APPLICATION TO CERTAIN INDIVIDUALS
14 WHO HAVE NOT FILED A RETURN OF TAX FOR THE
15 PRECEDING TWO YEARS.—In the case of any indi-
16 vidual who, at the time of any determination made
17 pursuant to paragraph (3), has filed a tax return for
18 neither the applicable taxable year nor for the year
19 following the applicable taxable year, the Secretary
20 shall, consistent with rules similar to the rules of
21 section 6428A(f)(5)(H)(i), apply paragraph (1) on
22 the basis of information available to the Secretary
23 and shall, on the basis of such information, deter-
24 mine the advance refund amount with respect to
25 such individual without regard to subsection (b)(2)

1 unless the Secretary has reason to know that such
 2 amount would otherwise be reduced by reason of
 3 such subsection.

4 “(7) SPECIAL RULE RELATED TO TIME OF FIL-
 5 ING RETURN.—Solely for purposes of this sub-
 6 section, a return of tax shall not be treated as filed
 7 until such return has been processed by the Internal
 8 Revenue Service.

9 “(8) APPLICABLE TAXABLE YEAR; REBATE
 10 TAXABLE YEAR.—For purposes of this subsection—

11 “(A) REBATE TAXABLE YEAR.—The term
 12 ‘rebate taxable year’ means the taxable year for
 13 which a credit is allowed under this section.

14 “(B) APPLICABLE TAXABLE YEAR.—The
 15 term ‘applicable taxable year’ means the second
 16 taxable year preceding the rebate taxable year.

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

21 “(1) regulations or other guidance providing
 22 taxpayers the opportunity to provide the Secretary
 23 information sufficient to allow the Secretary to make
 24 payments to such taxpayers under subsection (f) (in-
 25 cluding the determination of the amount of such

1 payment) if such information is not otherwise avail-
2 able to the Secretary, and

3 “(2) regulations or other guidance to ensure to
4 the maximum extent administratively practicable
5 that, in determining the amount of any credit under
6 subsection (a) and any credit or refund under sub-
7 section (f), an individual is not taken into account
8 more than once, including by different taxpayers and
9 including by reason of a change in joint return sta-
10 tus or dependent status between the taxable year for
11 which an advance refund amount is determined and
12 the taxable year for which a credit under subsection
13 (a) is determined.

14 “(h) OUTREACH.—The Secretary shall carry out a
15 robust and comprehensive outreach program to ensure
16 that all taxpayers described in subsection (g)(1) learn of
17 their eligibility for the advance refunds and credits under
18 subsection (f); are advised of the opportunity to receive
19 such advance refunds and credits as provided under sub-
20 section (g)(1); and are provided assistance in applying for
21 such advance refunds and credits.”.

22 (b) TREATMENT OF CERTAIN POSSESSIONS.—

23 (1) PAYMENTS TO POSSESSIONS WITH MIRROR
24 CODE TAX SYSTEMS.—The Secretary of the Treas-
25 ury shall pay to each possession of the United States

1 which has a mirror code tax system amounts equal
2 to the loss (if any) to that possession by reason of
3 the amendments made by this section. Such
4 amounts shall be determined by the Secretary of the
5 Treasury based on information provided by the gov-
6 ernment of the respective possession.

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

21 (3) INCLUSION OF ADMINISTRATIVE EX-
22 PENSES.—The Secretary of the Treasury shall pay
23 to each possession of the United States to which the
24 Secretary makes a payment under paragraph (1) or

1 (2) an amount equal to the increase (if any) of the
2 administrative expenses of such possession—

3 (A) in the case of a possession described in
4 paragraph (1), by reason of the amendments
5 made by this section, and

6 (B) in the case of a possession described in
7 paragraph (2), by reason of carrying out the
8 plan described in such paragraph, or

9 The amount described in subparagraph (A) shall be
10 determined by the Secretary of the Treasury based
11 on information provided by the government of the
12 respective possession.

13 (4) COORDINATION WITH CREDIT ALLOWED
14 AGAINST UNITED STATES INCOME TAXES.—No cred-
15 it shall be allowed against United States income
16 taxes under section 6433 of the Internal Revenue
17 Code of 1986 (as added by this section), nor shall
18 any credit or refund be made or allowed under sub-
19 section (f) of such section, to any person—

20 (A) to whom a credit is allowed against
21 taxes imposed by the possession by reason of
22 the amendments made by this section, or

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

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

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

15 (c) ADMINISTRATIVE PROVISIONS.—

16 (1) DEFINITION OF DEFICIENCY.—Section
 17 6211(b)(4)(A) of the Internal Revenue Code of 1986
 18 is amended by striking “6428A, 6428B” and insert-
 19 ing “6428A, 6428B, 6433,”.

20 (2) EXCEPTION FROM REDUCTION OR OFF-
 21 SET.—Any refund payable by reason of section
 22 6433(f) of the Internal Revenue Code of 1986 (as
 23 added by this section), or any such refund payable
 24 by reason of subsection (b) of this section, shall not
 25 be—

1 (A) subject to reduction or offset pursuant
 2 to subsection (c), (d), (e), or (f) of section 6402
 3 of the Internal Revenue Code of 1986 or any
 4 similar authority permitting offset, or

5 (B) reduced or offset by other assessed
 6 Federal taxes that would otherwise be subject
 7 to levy or collection.

8 (3) CONFORMING AMENDMENTS.—

9 (A) Paragraph (2) of section 1324(b) of
 10 title 31, United States Code, is amended by in-
 11 serting “6433,” after “6431,”.

12 (B) The table of sections for subchapter B
 13 of chapter 65 of the Internal Revenue Code of
 14 1986 is amended by adding at the end the fol-
 15 lowing new item:

“Sec. 6433. Gasoline price rebates.”.

16 **SEC. 4. PROTECT CONSUMERS FROM GAS PRICE HIKES**
 17 **FUND.**

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

21 **“SEC. 9512. PROTECT CONSUMERS FROM GAS PRICE HIKES**
 22 **FUND.**

23 “(a) ESTABLISHMENT AND FUNDING.—There is
 24 hereby established in the Treasury of the United States
 25 a trust fund to be referred to as the ‘Protect Consumers

1 from Gas Hikes Fund’, consisting of such amounts as may
 2 be appropriated or credited to such trust fund as provided
 3 for in this section and section 9602(b).

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

9 “(c) USE OF FUNDS.—The Secretary shall pay from
 10 time to time from the Protect Consumers from Gas Price
 11 Hikes Fund to the general fund of the Treasury amounts
 12 equal to the amounts of refunds provided under section
 13 6433.”.

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

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

