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[X]th CONGRESS
[X] Session

H. R. [XXXX]

To amend the Internal Revenue Code of 1986 to remove favorable tax treatment for coal production, extraction, and processing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
[DATE]

[Mr/Ms Congressperson] introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to remove favorable tax treatment for coal production, extraction, and processing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVAL OF CERTAIN TAX EXPENDITURES THAT FAVOR COAL.

(a) In General.—Section 631(c) of the Internal Revenue Code of 1986 is amended—

(1) by striking each mention of "coal," so the section refers only to domestic iron ore.[1]

(b) In General.—Section 617(f) of the Internal Revenue Code of 1986 is amended—

(1) by adding to paragraph (2) "coal does not fall within the meaning of mining property to this section."[2]

(2) by striking each mention of coal from paragraph (3).[3]

(3) by adding a new paragraph (4): "ORE OR OTHER MINERALS. The term "ore or other minerals" shall not include coal for the purposes of this section 617."[4]

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[1] This subsection currently exempts the income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, from the provision that the owner shall not be entitled to the allowance for percentage depletion if for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income. By striking references to coal in this section, the owner as a co-adventurer, partner, or principal in the mining of coal who meets the above criterion will not be entitled to the allowance for the percentage depletion referenced above.

[2] This change reflects that because coal-related expenditures are no longer deductible under Section 617(a), it should no longer be necessary to include coal in the definition of mining property.

[3] This change reflects that because coal-related expenditures are no longer deductible under Section 617(a), it should no longer be necessary to address coal-related dispositions.

[4] To the extent that this provision can be construed as permitting the charging of deductions for expenditures related to coal, clarifying that coal cannot be considered "ore or other minerals" for these purposes has the effect of disallowing such deductions for coal-related expenditures.

(c) In General.—Section 616 of the Internal Revenue Code of 1986 is amended—

(1) by amending the parenthetical in subsection (a) to read: "(other than coal or an oil or gas well)".

(2) by adding a new subsection (f) paragraph (1): "The term "ore or other minerals" shall not include coal for the purposes of this section 616".[5]

(3) by adding to new subsection (f), paragraph (2): "Coal does not fall within the meaning of mine or deposit to this section".[6]

(d) In General.—Section 613 of the Internal Revenue Code of 1986 is amended—

(1) by striking the mentions of "coal" and "lignite" from subsection (b) paragraph (4) so the section refers only to asbestos, brucite, perlite, sodium chloride, and wollastonite.

(2) by striking "or" from paragraph (b)(7)(B).

(3) by replacing the punctuation in paragraph (b)(7)(C) with: "; or".

(4) by adding a new paragraph (b)(7)(D): "coal."

(5) by striking from subsection (c) paragraph (4)(A) *in toto*.

(e) In General.—Section 48A of the Internal Revenue Code of 1986 is stricken *in toto*.

(f) In General.—Section 48B of the Internal Revenue Code of 1986 is amended—

(1) by amending subsection (c) paragraph (2): "The term "gasification technology" means any process which converts a solid or liquid product from petroleum residue, biomass, or other materials (other than coal) which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion."

(g) In General.—Section 45 of the Internal Revenue Code of 1986 is amended—

(1) by striking from subsection (c) paragraphs (7) and (9) *in toto*.[7]

(2) by striking "with coal" and "or with both" of clause (ii) from subsection (d)(2)(A).[8]

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[5] To the extent that this provision can be construed as permitting the charging of deductions for expenditures related to coal, clarifying that coal cannot be considered "ore or other minerals" for these purposes has the effect of disallowing such deductions for coal-related expenditures.

[6] To the extent that this provision can be construed as permitting the charging of deductions for expenditures related to coal, this change reflects that because coal-related expenditures are no longer deductible under Section 616, it should no longer be necessary to include coal in the definition of mine or deposit.

[7] Paragraphs 7 and 9 of subsection (c) introduce the terms, "Refined coal" and "Indian coal", whose related terms will be removed. The purpose of striking these paragraphs is to avoid the potential confusion that would arise from introducing the terms "Refined coal" and "Indian coal" without any further reference to them to explain their relevance.

[8] As currently defined, the renewable electricity production credit is available for taxpayers that produce electricity subject to certain conditions, including without limitation that it be generated at a "qualified facility". "Qualified facilities" include closed-loop biomass facilities which meet certain criteria, including those which use closed-loop biomass to co-fire with coal. By striking references to coal in

(3) by striking paragraphs (8) and (10) from subsection (d).[9]

(4) by striking paragraphs (8) and (10) from subsection (e), as well as subparagraph (9)(B).[10]

(h) Effective Date.—The amendments made by this section shall apply as of [Date].[11]

this criterion, the closed-loop biomass facilities that qualify as "qualified facilities" for these purposes may not co-fire with coal, thus eliminating a tax benefit for facilities that use coal in addition to biomass, as opposed to those facilities using only biomass.

[9] Refined coal production facility (8) and Indian coal production facility (10) fall under the category of "qualified facility" of which the amount of renewable electricity production credit for any taxable year is reduced by one half the original amount stipulated in (a)(1), 1.5 cents multiplied by the kilowatt hours of electricity. By striking paragraphs (8) and (10) from (d), Refined and Indian coal production facilities will not be subject to the same credit allocation as the rest of the "qualified facilities".

[10] Paragraphs 8 and 10 of subsection (e) provide the mechanisms for tax credit allocations for refined coal and Indian coal, respectively, subject to certain pricing and criteria. By striking these paragraphs, the allocation of the tax credits for these coal production activities is removed.

[11] Effective date may be a single date, but it may make sense to stagger implementation for different parts of the bill, including without limitation to accommodate differences in implementation with respect to repealed provisions that relate to expenditures (*i.e.*, whether repealed tax treatment is based on date of expenditure or date of relevant underlying activity). Differences could also be incorporated with respect to effective date for existing projects versus prospective future projects (noting that there may be greater political resistance to changes that impact existing projects, the financial viability of which may be predicated on assumptions about ongoing tax treatment).