



Washington Council Ernst & Young

Legislative Alert

September 19, 2008

Side-by-Side Comparison of Renewable Energy Tax Bills

(Senate Compromise Package to be considered on Senate Floor on September 23, 2008)

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
I. Energy Production Incentives				
a. Section 45 production tax credit	3-year extension (through 2011) of the placed-in-service date for qualified facilities, except one year for wind facilities (through 2009). Adds marine renewables as a qualifying technology; expands the definitions of open loop and closed loop biomass, and updates the definitions of trash combustion, and non-hydroelectric dam facilities. The aggregate amount of credits would be capped for facilities placed in service after 12/31/2009 to an amount that has present value equal to 35% of facility's cost. Sale of	Same as H.R. 6049. -\$7.046 billion	Same as H.R. 6049. -\$6.893 billion	2-year extension (through 2010) of placed-in-service date, 1-year for wind and refined coal facilities (through 2009). Adds marine renewables as a qualifying technology; updates the definitions of open loop biomass, trash combustion, and non-hydroelectric dam facilities. Increases the emissions standards on the refined coal credit and removes the market value test. The provision in H.R. 6049 to cap the value of the PTC at an ITC equivalent of 35% is not in the package. -\$5.817 billion.

¹ Revenue estimates are for a 10-year period and based upon estimates prepared by the Joint Committee on Taxation.

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
	net electricity to regulated public utilities treated as sales to unrelated persons. The effective date of the expanded definition of biomass facilities applies to property placed in service after date of enactment. - \$7.046 billion ¹			
b. Section 48 investment tax credit (ITC) for purchases of certain solar and fuel cell qualifying energy property	6-year extension of placed-in-service date through 2014 for 30% ITC for solar energy property and qualified fuel cell property and 10% ITC for microturbines; increase \$500 per half kilowatt of capacity for qualified fuel cells to \$1,500; remove public utility exclusion and allow credit to be used to offset AMT; new 10% ITC for combined heat and power systems. - \$1.376 billion	Same as H.R. 6049, except for an 8-year extension of placed-in-service date through 2016 for 30% ITC for qualified solar energy and fuel cell property, and 10% ITC for microturbines. - \$1.777 billion	Same as S. 3335 -\$1.765 billion	Same as S. 3335, except adds a 10% ITC for geothermal heat pumps. -\$1.942 billion
c. Section 25D investment tax credit for purchases of residential energy efficient property	6-year extension of placed-in service date through 2014; increase \$2,000 annual credit cap to \$4,000; include residential small wind equipment and geothermal heat pumps; allow credit to be used to offset AMT. - \$666 million	Same as House bill, except 8-year extension of placed-in service date through 2016. - \$907 million	Same as S. 3335. -\$907 million	Same as S. 3335, except remove the credit cap (currently \$2,000) for solar electric investments, cap small wind at \$4,000 and geothermal heat pumps at \$2,000. The effective date for elimination of the cap for solar investments is property placed in service after 12/31/2008. -\$1.294 billion
d. Sales of electric transmission property.	1-year extension (through 2009) of current law deferral of gain on sales of electric transmission property by electric utilities to FERC-approved independent transmission companies. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
e. Clean renewable energy bonds (CREBs)	Authorizes \$2 billion of bonds for facilities that generate electricity from renewable sources. Qualifying facilities include those listed in Sec. 45(d) (wind, solar, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, marine renewables, and trash combustion facilities), but excluding refined coal and Indian coal facilities. Bonds are divided three ways between State/local/tribal governments, public power providers, and electric cooperatives; Davis-Bacon labor standards are applied to facilities constructed with the bonds. Applies to obligations issued after date of enactment. - \$548 million	Similar to House bill, except no Davis-Bacon labor standards - \$548 million	Same as H.R. 6049 (i.e., includes Davis-Bacon labor standards), except it authorizes only \$1.75 billion of new CREBs. -\$497 million	Same as S. 3335 (i.e., no Davis-Bacon labor standards), except that it authorizes only \$800 million of new CREBs. -\$267 million

II. Carbon Mitigation Provisions

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
a. Carbon Capture and Sequestration (CCS) Demonstration Projects	Provides for \$1.5 billion of tax credits for the creation of advanced coal electricity projects and certain coal gasification projects: \$1.25 billion would be awarded to advanced coal electricity projects and \$250 million would be awarded to certain coal gasification projects; provide competitive certification award authority to Department of Energy - \$1.422 billion	Similar to H.R. 6049, except projects would be awarded by the Treasury Department through an application process, with applicants that demonstrate the greatest carbon capture and sequestration potential receiving highest priority. Certain minimum CO2 sequestration requirements must be met. Once credits are awarded, recipients that fail to meet minimum CO2	Substantially the same as S. 3335, except that the bill provides for \$1.1 billion of tax credits; \$950 million for advanced coal electricity projects and \$150 million for certain coal gasification projects. -\$1.044 billion	Same as S. 3335, except the amendment clarifies that gasification projects producing transportation grade liquid fuels are eligible under Section 48B. -\$1.424 billion

		sequestration levels would forfeit the credits. - <i>\$1.423 billion</i>		
b. Solvency for Black Lung Disability Trust Fund (coal excise tax).	Extend excise taxes on coal from underground and surface mines at current rates until all amounts borrowed by the Black Lung Disability Trust Fund from the general fund of the Treasury have been repaid. <i>\$1.287 billion</i>	Same as H.R. 6049. <i>\$1.287 billion</i>	Same as H.R. 6049. <i>\$1.287 billion</i>	Same as H.R. 6049. <i>\$1.287 billion</i>
c. Coal excise tax refund	Creates a special procedure under which certain coal producers and exporters may claim refunds of coal excise taxes that were improperly imposed on exported coal. - <i>\$199 million</i>	Same as H.R. 6049. - <i>\$199 million</i>	Same as H.R. 6049. - <i>\$199 million</i>	Same as H.R. 6049. - <i>\$199 million</i>
d. Carbon dioxide capture credit	No provision.	No provision.	No provision.	The amendment creates a \$10 credit per ton for the first 75 million metric tons of CO2 captured and transported from an industrial source for use in enhanced oil recovery and \$20 credit per ton for CO2 captured and transported from an industrial source for permanent storage in a geologic formation. Qualifying facilities must capture at least 500,000 metric tons of CO2 per year. The credit applies to CO2 stored or used in the U.S. - <i>\$1.119 billion</i>
e. Steel Industry Fuel	No provision.	No provision.	No provision.	Adds a credit for coal used in the manufacture of coke, a feedstock used in steel production. The credit amount is \$2 per barrel-equivalent of oil, and is available for facilities placed in service before 1/1/2010. Effective for fuel produced

				and sold from facilities placed in service after 9/30/2008. -\$61 million
f. Carbon audit of the tax code.	Directs Treasury to request the National Academy of Sciences to review the tax code to identify the tax provisions that have the largest effects on carbon and other greenhouse gas emissions and to estimate the magnitude of those effects, due 2 years from date of enactment. <i>No revenue effect</i>	Same as H.R. 6049. <i>No revenue effect</i>	Same as H.R. 6049. <i>No revenue effect</i>	Same as H.R. 6049. <i>No revenue effect</i>

III. Transportation and Domestic Fuel Security

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
a. Allowance for property to produce cellulosic biofuels.	Amend current law 50% expensing for facilities that produce cellulosic ethanol to include facilities that produce other cellulosic biofuels. Effective for property placed in service after date of enactment. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>	Same as H.R. 6049. <i>Revenue neutral</i>
b. Biodiesel, renewable diesel credits	1-year extension through 2009 of \$1.00 biodiesel production tax credit, \$.10 small biodiesel producer credit, \$1.00 renewable diesel credit; harmonize credit rates for biodiesel and agri-biodiesel; eliminate thermal depolymerization requirement for renewable diesel; disallow credit to renewable diesel coproduced with petroleum products; qualify biomass jet fuel for renewable diesel credit under Section 40A; deny	Same as H.R. 6049. -\$401 million	Same as H.R. 6049. -\$401 million	Substantially similar to H.R. 6049. -\$451 million

	certain fuel credits for fuels produced and used outside the U.S. (this provision effective May 15, 2008) - \$401 million			
c. Credit for alternative jet fuel	No provision.	No provision.	No provision.	1-year extension (through 2009) of the 50-cents-per-gallon equivalent excise tax for alternative fuels (other than hydrogen) under Sec. 6426. Effective 10/01/2009, qualified jet fuel derived from coal through the Fischer-Tropsch process must be produced at a facility that separates and sequesters at least 50% of CO2 emissions, increasing to 75% on 12/31/09. Biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels would also qualify for the credit. -\$61 million.
d. Plug-in electric drive vehicles	New credit for qualified plug-in electric drive vehicles: the credit's base amount is \$3,000. If the qualified vehicle draws propulsion from a battery with at least 5 kilowatt hours of capacity, the credit is increased by \$200, plus another \$200 for each kw hour of battery capacity in excess of 5 kw hours up to 15 kw hours. Credit is available in full up to the end of the first calendar quarter after the quarter in which the manufacturer records 60,000 sales, and reduced in following quarters. The credit is available against AMT. - \$1.056 billion	Same as H.R. 6049.	Same as H.R. 6049.	New credit for qualified plug-in electric drive vehicles. The credit for passenger vehicles and light truck ranges from \$2500 to \$7500. Taxpayers may claim the credit up to the end of the first quarter after the quarter in which the total number of qualified plug-in electric drive vehicles sold in the U.S. exceeds 250,000. The credit is available against AMT. -\$758 million.

e. Idling truck exclusion	Exclusion from heavy vehicles excise tax for the cost of idling reduction units and advanced insulation. - \$95 million	Same as H.R. 6049.	Same as H.R. 6049.	Same as H.R. 6049.
f. New York Liberty Zone	Restructure New York Liberty Zone incentives to provide tax credits for expenditures made for transportation infrastructure projects connecting with the New York Liberty Zone. - \$1.117 billion	No provision.	Same as H.R. 6049. -\$1.129 billion.	No provision.
g. Bicycle fringe benefit	Extend transportation fringe benefit to bicycle commuters. - \$10 million	Same as H.R. 6049.	Same as H.R. 6049.	Same as H.R. 6049.
h. Alternative refueling stations credit	Increase the 30% alternative refueling property credit (capped at \$30,000) to 50% (capped at \$50,000) and two-year extension (through 2010). - \$154 million	Same as H.R. 6049.	Same as H.R. 6049, but the bill also increases the cap on alternative refueling property credit for individuals (currently capped at \$1,000) to \$2,000 and extend this credit for natural gas home refueling pumps through 2017. -\$226 million.	Extends the credit through 2010, but retains current law credit caps. The amendment also adds electric vehicle recharging property to the types of property eligible for the credit. -\$87 million.
i. Energy Security Bonds	No provision.	No provision.	Create a new category of tax credit bonds to provide States with funds to help finance the installation of natural gas fuel pumps at retail gas stations. National limitation of \$1.75 billion, allocated to the States. -\$591 million.	No provision.
j. Publicly-traded partnership income treatment of alternative fuels	No provision.	Permit publicly-traded partnerships to treat the income derived from the transportation, storage or marketing of certain alternative fuels as qualifying income for purposes of the publicly-traded partnership rules. Effective for taxable years beginning after	Same as S. 3335 Effective on date of enactment, for taxable years ending after DOE. -\$75 million.	Same as S. 3335, with the addition of anthropogenic CO2. Effective on date of enactment, for taxable years ending after DOE. -\$119 million.

		12/31/2011. -\$61 million.		
k. Percentage depletion for marginal wells	No provision.	No provision.	No provision.	1-year extension (through 2009) of the suspension of the taxable income limitation for purposes of depreciating marginal oil and gas wells. -\$124 million.
I. Refinery expensing	No provision.	No provision.	No provision.	2-year extension (through 2010) of the temporary refinery expensing provisions enacted in the Energy Policy Act of 2005 for refinery property which increases total capacity by 5% or which processes nonconventional feedstocks at a rate equal to or greater than 25% of the total throughput of the refinery. Amendment also qualifies refineries directly processing shale or tar sands. -\$894 million.

IV. Energy Conservation and Efficiency

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
a. Qualified energy conservation bonds	Creates a new category of tax credit bonds to finance State and local government programs and initiatives designed to reduce greenhouse gas emissions. National limitation of \$3 billion, allocates to States, municipalities and tribal governments. - \$1.027 billion	Same as H.R. 6049. -\$1.025 billion.	Similar to H.R. 6049, but with a national limitation of \$2.625 billion. -\$895 million.	Similar to H.R. 6049, but with a national limitation of \$800 million. -\$276 million.
b. Sec. 25C credit for energy-efficiency improvements to existing homes	1-year extension (through 2008) of the credit under sec. 25C for energy-efficient improvements to existing homes and include energy-	Same as House bill, plus modification of water heater and energy efficiency improvement requirements. - \$1.067 billion	Same as S. 3335. -\$1.067 billion.	Extend the credit for energy-efficient improvement to existing homes for 2009, include biomass fuel stoves (maximum \$300 credit), and

	efficient biomass fuel stoves as a new class of energy-efficient property eligible for consumer tax credit of \$300. - \$1.061 billion			clarify the efficiency standard for water heaters. -\$827 million.
c. Section 179D deduction for energy-efficient improvements to commercial buildings	5-year extension (through 2013). - \$891 million	Same as H.R. 6049. - \$891 million	Same as H.R. 6049. - \$891 million	Same as H.R. 6049. - \$891 million
d. Section 45M energy efficient appliance tax credits	3-year extension (through 2010) and modification of efficiency standards. - \$323 million	Same as H.R. 6049. -\$323 million	Same as H.R. 6049. - \$323 million	Same as H.R. 6049. -\$322 million
e. Section 45L credit for energy-efficiency improvements in new homes.	No provision.	No provision.	No provision.	1-year extension (through 2009) of credits for construction of energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling. -\$61 million.
e. Accelerated depreciation for smart meters and smart grid systems	Allow smart electric meters and smart grid systems to be recovered over 10 years (instead of 20-year recovery period applicable under MACRS) - \$921 million	Same as H.R. 6049. - \$921 million	Same as H.R. 6049. - \$921 million	Similar to H.R. 6049, but provides that the change does not apply to property that already qualifies under a shorter recovery schedule. -\$915 million.
f. Qualified green building and sustainable design project bonds	3-year, 3-month extension through 2012 of the authority to issue qualified green building and sustainable design project bonds (\$2 billion authority) - \$45 million	Same as H.R. 6049. - \$45 million	Same as H.R. 6049. - \$45 million	Same as H.R. 6049. - \$45 million
g. Recycling property	No provision.	Allows companies to claim accelerated depreciation for the purchase of equipment used to collect, distribute or recycle a variety of commodities. - \$162 million	No provision.	Same as S. 3335. -\$162 million.

V. Revenue Offsets

	H.R. 6049 (as passed by the House on 5/21/08)	Baucus-Reid (S. 3335)	H.R. 6899 (as passed by the House on 9/16/08)	Senate Compromise Amendment
a. Section 199 deduction.	No provision. (See note at end below.)	No provision. (See note at end below.)	Deny section 199 deduction for major integrated and/or foreign-government controlled oil companies, and free at 6% for all others, for income attributable to domestic production of oil, gas, or primary products thereof. Effective for taxable years beginning after 12/31/08. <i>+\$13.904 billion</i>	Freeze at 6% the section 199 deduction of income attributable to domestic production of oil, gas, or primary products thereof. Effective for taxable years beginning after 12/31/08. <i>+\$4.906 billion</i>
b. Foreign oil and gas extraction income; foreign oil related income.	No provision.	No provision.	The bill would require oil and gas companies to use the ascertainable independent market values at the nearest point to the well for which an independent market exists in calculating their foreign oil and gas extraction income (FOGEI) and foreign oil related income (FORI). The bill would also require that where a foreign country collects foreign taxes that are limited in their application to taxpayers engaged in oil or gas activities that oil and gas companies treat these taxes as oil and gas extraction taxes subject to the FOGEI limitation. <i>+\$3.850 billion.</i>	The amendment eliminates the distinction between foreign oil and gas extraction income (FOGEI) and foreign oil related income (FORI). FOGEI relates to upstream production to the point the oil leaves the wellhead. FORI is defined as all downstream processes once the oil leaves the wellhead (i.e. transportation, refining). Currently, FOGEI and FORI have separate foreign tax credit limitations. This proposal combines FOGEI and FORI into one foreign oil basket, and applies the existing FOGEI limitation. <i>+\$2.230 billion.</i>
c. Corporate estimated tax payments.	No provision.	No provision.	Modify timing for corporate estimated tax payments for large-energy sector corporations. <i>Revenue neutral</i>	No provision.
d. Broker reporting of customer's basis in	No provision.	No provision.	No provision.	Require basis reporting to the IRS by brokers for

securities transactions.				transactions involving publicly traded securities, such as stock, debt, commodities, derivatives and other items as specified by Treasury. Effective for transactions on or after 1/01/2011 for stock transactions, 1/01/2012 for mutual fund transactions, and 1/01/2013 for other securities. <i>+6.670 billion.</i>
e. FUTA surtax of 0.2 percent	No provision.	No provision.	No provision.	Extend the temporary FUTA 0.2% surtax for one year (through 2009). <i>+1.474 billion.</i>
f. Oil Spill Liability Trust Fund	No provision.	No provision.	No provision.	Extend the oil spill tax through 12/31/2017, increase the per barrel tax from 5 cents to 8 cents from 2009 through 2016, and to 9 cents in 2017. The amendment also repeals the requirement that the tax be suspended when the unobligated balance exceeds \$2.7 billion. <i>+\$1.715 billion.</i>

H.R. 6049 provided for approximately \$18 billion of energy-related tax incentives and approximately \$27 billion of expiring temporary tax provisions. The bill contained two revenue offset provisions: (1) current inclusion of nonqualified deferred compensation paid by certain tax-indifferent parties (+\$24.289 billion); and (2) delay in implementation of worldwide interest allocation rules (\$29.962 billion).

S. 3335 as introduced in the Senate contained no revenue offsets.