The Stop Tax-breaks for Oil Profiteering (STOP) Act of 2009

In 2000, speculative trading in the oil futures markets accounted for 37 percent of crude oil trading on the New York Mercantile Exchange. By summer 2008, when prices were approaching $150 a barrel, that number had grown to more than 70 percent of trading. Many analysts think that the growing role of speculators and new demand on the relatively small futures markets is partly responsible for the rise in the price of oil and, ultimately, in the price of gas at the pump.

As proposed by U.S. Senator Ron Wyden (D-Ore.), the Stop Tax-breaks for Oil Profiteering (STOP) Act of 2009 would eliminate the tax incentives that entice speculators into the market.

- The STOP Act would tax the trading gains and losses of any tax-paying, non-commercial energy commodity investors – such as hedge funds investors – the same way commercial participants are taxed: as if they were ordinary gains and losses. Gains made on oil and natural gas investments would no longer be eligible for lower capital gains rates.

- The STOP Act would also end the tax breaks that favor tax-exempt energy commodity investors, like pension funds or endowments, over commercial traders. At present, tax exempt organizations and funds pay no tax at all on their commodity investments. This bill would require gains from any kind of oil and natural gas trading to be defined as "unrelated business taxable income" (UBTI) and taxed at the same rate taxable income would be taxed.

- UBTI already exists as a well-established tax obligation for income that is not directly related to the tax exempt purpose of the organization. UBTI was created precisely to keep tax exempt organizations from competing unfairly with taxpaying businesses, which is what they are doing when they enter the commodity markets solely for investment income purposes.

- The bill also includes provisions that would prevent tax exempt organizations from investing in off-shore funds to try to avoid the new UBTI tax.

- In both cases, the STOP Act includes a number of technical changes to the tax code to ensure that everyone is playing by the same rules and that there are not opportunities to cheat the system and avoid the new taxes. For example: the tax code now allows marked-to-market commodity investments (under section 1256) to treat 60% of gains as long-term capital gain. The bill would change that rule to treat 100% of gains made on oil and natural gas-related investments as short-term gain.

- The changes would not hurt the true business participants that need the markets to operate or the traditional traders who help them function; because the STOP Act would conform everyone to the tax rules that these participants and traders are already operating under.

- The STOP Act would end the free ride that institutional investors get on profits made from the high prices of oil and natural gas – prices that have been driven higher by the high volume of institutional investment. Without tax subsidies, big investors will invest

less in oil and gas markets, which means that oil and natural gas prices can be expected to fall, saving consumers at the pump.

- As now proposed, the STOP Act would only cover the oil and natural gas markets, and related products like gasoline and diesel fuel, and be in effect for the next four years. However, after three years, we would require the Treasury Department to issue a report analyzing the impact of these changes on these markets, making recommendations on what changes to make.