



Cashing in on COVID: Tax Breaks, Royalties and Stimulus Loans

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As the US continues to lead the world in COVID-19 infections and deaths, Big Oil is looking to cash in on the policy response to the crisis. While frontline workers make due without hazard pay or protective gear, the domestic oil and gas industry is using its considerable lobbying muscle to secure a massive windfall at the expense of workers, taxpayers and the climate. Big Oil is not letting the coronavirus go to waste.

HIGHLIGHTS



At least 11 oil and gas companies and trade associations reported lobbying on tax issues in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the \$2.2 trillion stimulus package passed in March. The filings indicate that tax policy was Big Oil's largest single intervention in stimulus negotiations.



This lobbying blitz seems to have been rewarded with over \$100 billion in tax cuts that disproportionately benefit the industry, especially companies like Halliburton that reported losses last year and companies like ExxonMobil beginning to report losses this year. These new giveaways are in addition to \$16 billion in annual direct subsidies for oil and gas.



The Independent Petroleum Association of America, the political arm of the fracking industry, reported lobbying one of the main banking regulators in the US, the Office of the Comptroller of the Currency, regarding coronavirus relief. This is a strong sign that heavily indebted drillers are seeking laxer lending standards to weather the crisis.



ExxonMobil and Occidental Petroleum -- the largest and fourth largest oil companies in the US -- both reported lobbying for the 45Q tax credit, a subsidy that mainly incentivizes using captured CO2 to stimulate oil production. Although the IRS Inspector General recently found that nearly \$1 billion in credits had been fraudulently claimed under the current law, Senate Republicans recently demanded that the tax credit be expanded and made permanent as part of the next coronavirus stimulus.



The Interior Department has begun the process of granting royalty relief, reducing or perhaps eliminating entirely the share due to taxpayers for oil and gas extracted from public lands and waters. This reflects lobbying pressure from at least two major trade associations.

INTRODUCTION

Friends of the Earth reviewed over 100 lobby filings from prominent US oil and gas companies and their largest trade associations, released last month as part of the quarterly filing requirements under the Lobbying Disclosure Act. The results show that Big Oil has already benefited substantially from the initial policy responses to the coronavirus -- and that it continues to shape policy outcomes to secure a windfall for itself.

Unfortunately, these filings are almost certainly an incomplete picture of the conversations happening behind closed doors between Big Oil, members of Congress and the Trump administration. What's more, they represent only a snapshot in time this year from January 1 to March 31. Nevertheless, they are the only available picture to date of Big Oil's lobbying activity on the coronavirus -- and the picture they paint is of disaster capitalism at its worst.

TAX BREAKS

Oil and gas companies and their trade associations lobbied more heavily for tax cuts than any other issue around the CARES Act. Although the legislation is mainly associated with \$1,200 checks to individuals and a \$500 billion slush fund for corporations, the package also included over \$591 billion in tax cuts. A closer look at these tax cuts reveals that Big Oil stands out as a significant beneficiary.

The story begins in 2017, when Trump signed into law his massive \$1.5 trillion tax cut. Because Big Oil was able to protect its numerous special interest deductions and benefit from the overall lowering of corporate rates, it emerged from tax reform as one of the clearest winners. At the time energy accountants only identified two new provisions potentially detrimental to the industry: a new cap on the amount of interest that could be deducted, and a new restriction capping the deduction for business losses and prohibiting those losses from being claimed against tax bills from previous years.¹

¹ <https://www.taxnotes.com/featured-analysis/news-analysis-tcj-as-effects-oil-and-gas-investments/2018/07/20/28854>

While Congress sprinted to pass the first coronavirus stimulus and Big Oil lobbied heavily for tax cuts, the final package modified and partially reversed two of the industry's only causes for complaint. At a cost of \$13.39 billion to taxpayers, the CARES Act temporarily raises the interest deduction cap for 2019 and 2020 from 30% to 50% of income. Even more expensive, the CARES Act allows net operating losses from 2018, 2019 and 2020 to be deducted against income taxes paid over the last five years -- at a cost to taxpayers of \$88 billion over the next two years.²

As companies like ExxonMobil, Marathon, and ConocoPhillips begin to announce historic losses, this last provision could be hugely profitable. It will allow money-losing corporate polluters a liquidity boost as they amend filings from previous years with losses incurred this year. This means that struggling oil companies are going to get checks in the mail from the IRS -- an extra desirable treat because this deduction covers several years before the Trump tax cuts when the corporate rate was substantially higher.

Curiously, the same treatment is allowed for losses incurred in 2018 and 2019, despite the fact those years obviously predate the coronavirus. This is good news for companies like Halliburton and Occidental who reported net losses in 2019.

While these are general benefits any company can claim, they disproportionately benefit companies facing losses and companies with substantial debt burdens -- which today describes oil and gas more than any other sector.³ The sober accountants at Ernest and Young agree, saying that, "...many energy companies will find the business tax changes made by the CARES Act to be helpful."⁴

The most prominent lobbying activities around the CARES Act and taxes include:

- The three main trade associations of the oil and gas industry -- [The American Petroleum Institute](#), the [Independent Petroleum Association of America](#) and [The American Fuel and Petrochemical Manufacturers](#) -- all reported lobbying directly around tax issues in the CARES Act. The firm [Ogilvy Government Relations](#) also reported similar tax lobbying around the CARES Act on behalf of its client, the American Petroleum Institute.
- Refining giant [Phillips 66](#) lobbied directly around tax issues in the CARES Act. ExxonMobil engaged in additional lobbying through the firm of [Hannegan Landau Poersch & Rosenbaum](#) on tax issues in the CARES Act. [Koch Industries](#) lobbied specifically around "energy tax issues" in the CARES Act through the firm Capitol Tax Partners.
- Major drilling companies [Conoco](#), [QEP](#), [Denbury](#), and [Murphy](#) all reported lobbying around tax issues in the CARES Act either directly or through lobbying firms.
- Major refiner [Marathon Petroleum](#) was the most specific in its filings, and reported lobbying around the "Section 163(j) temporary expansion" -- the precise section of the tax code that deals with the deduction cap for interest. Like the American Petroleum Institute, it also paid [Ogilvy Government Relations](#) to lobby around tax provisions in the CARES Act.

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² <https://www.taxpolicycenter.org/taxvox/who-benefits-cares-act-tax-cuts>

³ <https://www.mckinsey.com/~media/mckinsey/business%20functions/risk/our%20insights/covid%2019%20implications%20for%20business/covid%2019%20march%2030/covid-19-facts-and-insights-april-3-ashx>, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/moody-s-oil-gas-drillers-face-daunting-debt-wall-in-next-4-years-57196039>

⁴ <https://taxnews.ey.com/news/2020-0786-cares-act-has-implications-for-the-energy-industry>

STIMULUS SLUSH FUND

The biggest single prize in the CARES Act for corporate polluters is the \$454 billion corporate slush fund -- and Big Oil has wasted no time lobbying for special access to it. Managed through programs established by the Treasury and the Federal Reserve, the full amount can be increased in size through leverage to as much as \$4.5 trillion.

Already the Trump administration is promising additional support from the stimulus for oil and gas, including potentially creating an entirely new program solely for the industry. Recently it bowed to pressure from the industry and changed the rules for the \$600 billion Main Street Lending program, allowing companies to use these loans to refinance existing debt.⁵ This matters substantially to the heavily indebted fracking industry, which has over \$85 billion due in the next four years.⁶

In an initial clue of the coming bailout, the premier trade association of the fracking industry, the IPAA, reported lobbying the Office of the Comptroller of the Currency (OCC) around the CARES Act. This is a major federal agency responsible for regulating banks.

One possibility is that this lobbying was concerned with Section 4011 of the CARES Act. This provision allows the OCC to waive lending caps for banks. These rules were put in place to keep any single lender from exposing its balance sheet too recklessly to any single borrower. Waiving these standards could become a way for heavily indebted drillers to access additional credit, even at the expense of financial stability.

Another possibility is hinted at in a recent letter to Trump from House Republicans demanding unmitigated access to stimulus funds for the oil and gas industry. The letter adds: "We also urge the Administration to take necessary steps to assure that the 2016 Office of the Comptroller of the Currency Energy Lending Guidelines do not in any way hinder or prohibit producers from obtaining loans."⁷

This is especially significant because the guidelines referenced in the GOP letter were designed to help banks evaluate the risk of lending to oil companies. Banks were advised to not just evaluate the risk of so-called "reserve-based lending," essentially loans taken out against future production, but to evaluate companies more holistically based on "total debt." Measuring the risk of Senior Loans, or loans repaid first in the event of bankruptcy, was now supposed to factor in the total amount of riskier and more junior debt holdings.⁸

Although very arcane, it matters substantially to the heavily indebted fracking industry. The IPAA's direct lobbying of the OCC is the strongest indication yet of the industry's pursuit of a two-pronged bailout strategy: first, through direct lending programs as part of the \$454 billion stimulus funds, and second, through the relaxing of existing lending standards.

The highlights of the stimulus lobbying include:

- The [IPAA](#) lobbied the Comptroller of the Currency on the CARES Act
- Fracking firm [Range Resources](#) hired FTI Consulting specifically to support, "Economic Stimulus Package assistance relating to the COVID-19 crisis."
- Fracking firm [QEP](#) lobbied directly on "loans and tax related matters" relating to the CARES Act.
- Fracking firm [Noble Energy](#) has engaged in direct lobbying around the CARES Act specifically for "provisions relating to Oil and Gas Industry Support."
- The refining giant [Phillips 66](#) lobbied directly around "Transportation-related issues in draft stimulus legislation," presumably opposing incentives for electric vehicles.

ROYALTY RELIEF

Royalty payments are the share of profits oil and gas companies must pay to the state and federal government for resources extracted from public lands and waters. Big Oil has been lobbying hard to reduce or suspend these royalty payments, and they have a friend in Secretary of the Interior David Bernhardt, a former oil lobbyist himself. This would be an especially brutal blow to local and state governments heavily dependent on royalty revenue for public services, especially in the Gulf Coast and in the West.

So far, the Interior Department has begun a case-by-case approach granting royalty relief both onshore and in the Gulf. However, Senate Republicans have pushed for Secretary Bernhardt to use his authority much more broadly to reduce or suspend royalties across the board.⁹

5 <https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf>

6 <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/moody-s-oil-gas-drillers-face-daunting-debt-wall-in-next-4-years-57196039>

7 <https://arrington.house.gov/2020/04/arrington-leads-letter-urging-support-for-oil-and-gas-industry/>

8 https://www.haynesboone.com/-/media/files/alert-pdfs/2018/enforceability_of_occ_reserve_based_lending_guidelines.ashx?la=en&hash=B4B4CEC49268A92B63063BED61580B-C5F70575D9

9 <https://www.reuters.com/article/us-global-oil-cassidy/trump-administration-turns-down-offshore-oils-plea-for-broad-royalty-cuts-cassidy-idUSKCN2243EB>

Lobbying activity of royalty relief has included:

- The Louisiana Mid-Continent Oil and Gas Association, a Gulf Coast trade association publicly supporting royalty relief, has hired [Big Sky Bluewater Strategies](#) to lobby on “economic incentives for offshore energy production in Gulf of Mexico.”
- The [IPAA](#), through its contract with the Alpine Group, has lobbied explicitly for “Federal Royalty Relief.”
- [Murphy Oil](#), a major producer in the Gulf of Mexico, has lobbied directly for offshore royalty relief.

CROOKED TAX CREDITS?

As Congress begins to consider the next stimulus, Senators Cramer and Capito recently demanded that any support for renewable energy must be accompanied by an extension of the 45Q tax credit, a subsidy claimed almost exclusively by the oil and gas industry that incentivizes using captured CO2 to stimulate additional production. Passed originally as part of the Wall Street bailout in 2008, it was extended and expanded a decade later in 2018. In February, before the coronavirus emergency was declared, House Minority Leader Kevin McCarthy had called for the subsidy to be expanded and made permanent.

The problem is that the Inspector General of the IRS released a recent report identifying major problems with the implementation of the 45Q tax credit. It indicates that the vast majority of credits were claimed by a handful of companies, and that 87% (nearly \$1 billion) of the credits claimed under the law were done without the proper monitoring of where the captured CO2 was being stored.¹⁰



The lobbying highlights for the 45Q tax credit include:

- [ExxonMobil](#) paid the accounting firm Ernest and Young to lobby on its behalf around 45Q.
- [Occidental Petroleum](#) lobbied directly for the 45Q tax credit.
- Denbury Resources lobbied for the 45Q tax credit through the firm of [Thomas Coburn LLP](#).
- The oilfield services giant [Baker Hughes](#) lobbied directly for the 45Q tax credit.

CONCLUSIONS AND RECOMMENDATIONS:

The original coronavirus stimulus was passed quickly and in an emergency. As additional legislation to address the crisis is considered, it is important for Congress to both prioritize still unmet human needs while correcting previous mistakes.

Much more work needs to be done, both to support workers and families in the face of COVID-19 and to prevent a runaway bailout of the fossil fuel industry. Congress cannot afford to wait. As it returns to work and begins to develop the next relief package, it must:

- Prioritize direct aid to workers and communities on the frontlines of the crisis.
- Support the ReWIND Act from Senator Merkley and Representative Barragan, the most comprehensive anti-bailout legislation to date. It would stop fossil fuels from gaining access to stimulus lending, eliminate royalty relief, and ban additional purchases into the Strategic Petroleum Reserve.
- Repeal the tax breaks provided to Big Oil in the last package.
- Allow the 45Q tax credit to expire and do not include it as a trade in forthcoming stimulus packages.

Appendix. Friends of the Earth reviewed the Q1 lobbying filings of US-based oil and gas companies comprising the drilling, refining, midstream, and oilfield services sectors, as well as their associated national and regional trade associations. The full list of filings and direct links to them are available online [here](#).

¹⁰ <https://www.menendez.senate.gov/imo/media/doc/04292020%20Menendez%20Letter%20to%20IRS%2045Q%20Follow-Up.pdf>