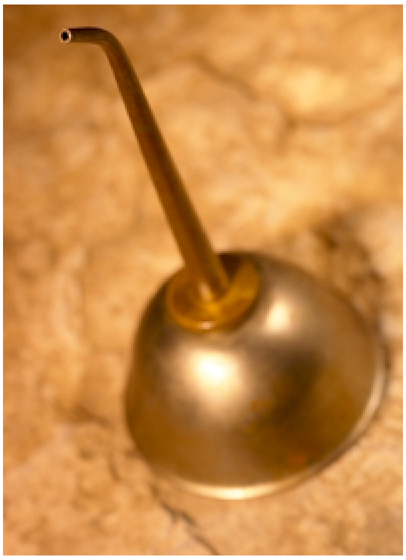
Kucinich Bill Would Tax Away "Unreasonable" Oil Company Profits



Under Kucinich's proposal — which currently has five cosponsors, all Democrats — a Reasonable Profits Board consisting of three presidential appointees would arbitrarily decide what constitutes a "reasonable profit" for "the sale in the United States of any crude oil, natural gas, or other taxable product." Then, if a company's profits exceed the board's magic number, those "excess" profits will be taxed on a graduated scale ranging from 50 percent (for profits that exceed the "reasonable profit" by no more than two percent) to a full 100 percent (for profits that exceed the "reasonable profit" by five percent or more). The revenues raised would then be used to provide tax credits for the purchase of fuel-efficient vehicles and to subsidize mass-transit fares.

The plan is, of course, hardly constitutional. The federal government is certainly not empowered to determine what a privately owned company's profit level should be — nor to confiscate "excess" profits.

The proposal is also based on faulty premises. The idea that oil companies can simply jack up prices to generate profits is absurd. If it were true, why would prices ever decline? Why, instead, would gas not cost $10 or even $100 a gallon? Gas prices, like all other prices, are driven by the market. An oil company that happens to invest in production when prices are low will naturally reap a larger profit when prices are high. By the same token, if that company forecasts badly and produces at a time of high prices but is forced to sell at lower prices, it will generate a smaller profit or even suffer a loss. Critics have noted that Kucinich's bill cannot change these immutable laws of economics; it can only distort the market and harm both oil companies and consumers.

In addition, there are many industries with significantly higher profit margins than the oil industry, as Hot Air's Ed Morrissey explains:

> While politicians like to hyperventilate over the gross dollar amounts of profit from oil companies, profit is most accurately measured as a percentage — the ratio of profits to the cost of producing those profits. Does the oil industry have a record of exploitive profit margins? Hardly. For 2009, the oil and gas industry ranked 9th on Fortune's list with a margin of 10.2%, exactly half of that of the network/communications industry, which finished first in 2008 as well. In fact, the margin for oil/gas decreased by three and a half points between 2008 and 2009.

It is, therefore, hardly fair for Kucinich to single out the oil-and-gas industry for its allegedly obscene profits. Why not pick on the telecoms instead?

Critics have also pointed out that is patently unfair to exclude the individuals most knowledgeable about the industry from the Reasonable Profits Board, as Kucinich's bill does in declaring that "members shall have no financial interests in any of the businesses for which reasonable profits are determined by the Board." True, it could create a conflict of interest to have industry members deciding what their own "reasonable profit" may be, but that just goes to show how nonsensical the whole concept is. Only people who have no connection to — and, as a result, very little knowledge of — the industry they are supposed to be regulating are permitted to serve on the board. Anyone who might have some idea what constitutes a "reasonable profit" for the industry is automatically excluded.

In practical terms, the bill is guaranteed to fail in its stated objective of reducing gas prices. Christopher Helman of *Forbes* writes:

> A tax on a commodity supplier's profits only disincentives the capital investment required to find and produce more of the commodity. Tax oil unfairly and you'll end up with less oil, which would only push prices up higher. Furthermore, a tax on U.S. oil producers would only incentivize foreign producers like the OPEC nations to collude to raise the price of oil to "unreasonable" levels, knowing that their U.S. competitors would be taxed out of the marketplace, thus strengthening the position of their cartel-opoly.

This is, in large measure, what happened the last time Congress tried to punish oil companies for achieving the objective of every business (i.e., profits). "Back in 1980," recalled Josh Barro of the Tax Foundation, "then-President Carter signed into law the Crude Oil Windfall Profits Tax Act, which imposed a 70% excise tax on the amount of an oil sale price exceeding $12.81 per barrel." The results, according to the Congressional Research Service: Domestic oil production dropped by three to six percent, and oil importation increased by eight to 16 percent. Because of other factors, oil prices actually fell, which caused the tax to raise very little revenue; but there is no guarantee that other factors would negate the price hikes that Kucinich's bill is certain to bring about.

Furthermore, the bill would harm investors, many of whom are just average Americans hoping to better their financial situations. As Steven Yates wrote in *The New American* in 2008, when politicians, including then-Sen. Barack Obama, were last making noises about a windfall profits tax:

> By and large, America's oil companies aren't owned by the small groups of insiders that control political parties. The percentage of industry shares owned by oil executives is only around 1.5. The rest is owned, indirectly, by tens of millions of American shareholders, often through their mutual funds, IRAs, or other personal retirement accounts, most of which invest in oil and natural gas stocks. If politicians were to institute a "windfall profits" tax or — worse yet — attempt to nationalize the oil and natural gas industries under the belief that this would get prices under control, who would really be hurt? The answer: these millions of ordinary investors with mutual funds, IRAs, or other personal retirement accounts.

In no way, then, will Kucinich's bill help ordinary Americans who are suffering sticker shock at the service station. It will not reduce the price of gas; in fact, it will probably increase the price. It will drive oil production to foreign countries. It will reduce investors' returns, thereby shrinking their standard of living. And it will take another bite out of Americans' fast-dwindling liberty.

The good news is that a similar bill failed to pass the Senate in 2008 because Republicans filibustered it; and with even more members of the Grand Old Party in both houses of Congress today, Kucinich's bill is unlikely to get very far. The bad news is that politicians determined to put private enterprise out of business will be burning the midnight oil to come up with new and more insidious ways to do so.