

107TH CONGRESS
1ST SESSION

S. 907

To amend the Internal Revenue Code of 1986 to encourage the use of ethanol and the adoption of other forms of value-added agriculture, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2001

Mrs. CARNAHAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to encourage the use of ethanol and the adoption of other forms of value-added agriculture, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investment in Value-
5 Added Agriculture Act”.

1 **SEC. 2. EXTENSION OF ETHANOL MOTOR FUEL EXCISE TAX**

2 **EXEMPTION.**

3 (a) IN GENERAL.—Section 40(e)(1) of the Internal
4 Revenue Code of 1986 (relating to termination) is
5 amended—

6 (1) in subparagraph (A) by striking “2007”
7 and inserting “2015”, and

8 (2) in subparagraph (B) by striking “2008”
9 and inserting “2016”.

10 **SEC. 3. SMALL ETHANOL PRODUCER CREDIT.**

11 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
12 PATRONS OF A COOPERATIVE.—Section 40(g) of the In-
13 ternal Revenue Code of 1986 (relating to alcohol used as
14 fuel) is amended by adding at the end the following new
15 paragraph:

16 “(6) ALLOCATION OF SMALL ETHANOL PRO-
17 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

18 “(A) ELECTION TO ALLOCATE.—

19 “(i) IN GENERAL.—In the case of a
20 cooperative organization described in sec-
21 tion 1381(a), any portion of the credit de-
22 termined under subsection (a)(3) for the
23 taxable year may, at the election of the or-
24 ganization, be apportioned pro rata among
25 patrons of the organization on the basis of

the quantity or value of business done with
or for such patrons for the taxable year.

“(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

“(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

“(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year,

“(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income, and

“(iii) shall be included in gross income of such patrons for the taxable year in the manner and to the extent provided in section 87.

1 “(C) SPECIAL RULES FOR DECREASE IN
 2 CREDITS FOR TAXABLE YEAR.—If the amount
 3 of the credit of a cooperative organization de-
 4 termined under subsection (a)(3) for a taxable
 5 year is less than the amount of such credit
 6 shown on the return of the cooperative organi-
 7 zation for such year, an amount equal to the
 8 excess of—

9 “(i) such reduction, over

10 “(ii) the amount not apportioned to
 11 such patrons under subparagraph (A) for
 12 the taxable year,

13 shall be treated as an increase in tax imposed
 14 by this chapter on the organization. Such in-
 15 crease shall not be treated as tax imposed by
 16 this chapter for purposes of determining the
 17 amount of any credit under this subpart or sub-
 18 part A, B, E, or G.”.

19 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
 20 CREDIT.—

21 (1) DEFINITION OF SMALL ETHANOL PRO-
 22 DUCER.—Section 40(g) of the Internal Revenue
 23 Code of 1986 (relating to definitions and special
 24 rules for eligible small ethanol producer credit) is

1 amended by striking “30,000,000” each place it ap-
 2 pears and inserting “60,000,000”.

3 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
 4 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
 5 469(d)(2)(A) of such Code is amended by striking
 6 “subpart D” and inserting “subpart D, other than
 7 section 40(a)(3),”.

8 (3) ALLOWING CREDIT AGAINST MINIMUM
 9 TAX.—

10 (A) IN GENERAL.—Subsection (c) of sec-
 11 tion 38 of such Code (relating to limitation
 12 based on amount of tax) is amended by redesign-
 13 ating paragraph (3) as paragraph (4) and by
 14 inserting after paragraph (2) the following new
 15 paragraph:

16 “(3) SPECIAL RULES FOR SMALL ETHANOL
 17 PRODUCER CREDIT.—

18 “(A) IN GENERAL.—In the case of the
 19 small ethanol producer credit—

20 “(i) this section and section 39 shall
 21 be applied separately with respect to the
 22 credit, and

23 “(ii) in applying paragraph (1) to the
 24 credit—

1 “(I) subparagraphs (A) and (B)
2 thereof shall not apply, and

3 “(II) the limitation under para-
4 graph (1) (as modified by subclause
5 (I)) shall be reduced by the credit al-
6 lowed under subsection (a) for the
7 taxable year (other than the small
8 ethanol producer credit).

9 “(B) SMALL ETHANOL PRODUCER CRED-
10 IT.—For purposes of this subsection, the term
11 ‘small ethanol producer credit’ means the credit
12 allowable under subsection (a) by reason of sec-
13 tion 40(a)(3).”.

14 (B) CONFORMING AMENDMENT.—Sub-
15 clause (II) of section 38(c)(2)(A)(ii) of such
16 Code is amended by striking “(other” and all
17 that follows through “credit)” and inserting
18 “(other than the empowerment zone employ-
19 ment credit or the small ethanol producer cred-
20 it)”.

21 (4) SMALL ETHANOL PRODUCER CREDIT NOT
22 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-
23 tion 87 of such Code (relating to income inclusion
24 of alcohol fuel credit) is amended to read as follows:

1 **“SEC. 87. ALCOHOL FUEL CREDIT.**

2 “Gross income includes an amount equal to the sum
3 of—

4 “(1) the amount of the alcohol mixture credit
5 determined with respect to the taxpayer for the tax-
6 able year under section 40(a)(1), and

7 “(2) the alcohol credit determined with respect
8 to the taxpayer for the taxable year under section
9 40(a)(2).”.

10 (c) CONFORMING AMENDMENT.—Section 1388 of the
11 Internal Revenue Code of 1986 (relating to definitions and
12 special rules for cooperative organizations) is amended by
13 adding at the end the following new subsection:

14 “(k) CROSS REFERENCE.—For provisions relating to
15 the apportionment of the alcohol fuels credit between coop-
16 erative organizations and their patrons, see section
17 40(g)(6).”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act.

21 **SEC. 4. CREDIT FOR FARMER INVESTMENT IN VALUE-**
22 **ADDED AGRICULTURAL PROPERTY.**

23 (a) IN GENERAL.—Subpart D of part IV of sub-
24 chapter A of chapter 1 of the Internal Revenue Code of
25 1986 (relating to business related credits) is amended by
26 adding at the end the following new section:

1 **“SEC. 45E. VALUE-ADDED AGRICULTURAL PROPERTY IN-**
 2 **VESTMENT CREDIT.**

3 “(a) GENERAL RULE.—For purposes of section 38,
 4 in the case of a taxpayer who is—

5 “(1) an eligible person, or

6 “(2) a farmer-owned entity,

7 the value-added agricultural property investment credit
 8 determined under this section for any taxable year is 50
 9 percent of the basis of any qualified value-added agricul-
 10 tural property placed in service during the taxable year.
 11 In the case of a farmer-owned entity, such credit shall be
 12 allocated on a pro rata basis among eligible persons hold-
 13 ing qualified interests in such entity as of the last day
 14 of such taxable year.

15 “(b) MAXIMUM CREDIT.—For purposes of subsection
 16 (a)—

17 “(1) PROPERTY PLACED IN SERVICE BY ELIGI-
 18 BLE PERSON.—In the case of property placed in
 19 service during a taxable year by an eligible person,
 20 the credit determined under this section for such
 21 year shall not exceed \$30,000, reduced by the
 22 amount of the creditable investments allowed for the
 23 taxable year under paragraph (2).

24 “(2) PROPERTY PLACED IN SERVICE BY FARM-
 25 ER-OWNED ENTITY.—

“(A) IN GENERAL.—In the case of property placed in service by a farmer-owned entity, the credit determined under this section shall not exceed the sum of the eligible person’s creditable investments in such entity as of the date such property is placed in service.

“(B) CREDITABLE INVESTMENTS.—For purposes of subparagraph (A), the term ‘creditable investments’ means, with respect to any property placed in service by a farmer-owned entity, the aggregate qualified investments made by the eligible person in such entity, reduced (but not below zero) by the sum of—

“(i) the amount of the aggregate qualified investments made by such person in such entity which were taken into account under this section with respect to property previously placed in service by such entity, and

“(ii) the amount of the aggregate qualified investments made by such person in all other farmer-owned entities which were taken into account under this section with respect to property previously placed in service by such other entities.

1 “(C) LIMITATION.—For purposes of this
 2 paragraph, the aggregate qualified investments
 3 made by the eligible person which may be taken
 4 into account for any taxable year shall not ex-
 5 ceed \$30,000.

6 “(c) DEFINITIONS.—For purposes of this section—

7 “(1) QUALIFIED VALUE-ADDED AGRICULTURAL
 8 PROPERTY.—The term ‘qualified value-added agri-
 9 cultural property’ means property—

10 “(A) which is used to add value to a good
 11 or product, suitable for food or nonfood use, de-
 12 rived in whole or in part from organic matter
 13 which is available on a renewable basis, includ-
 14 ing agricultural crops and agricultural wastes
 15 and residues, wood wastes and residues, and
 16 domesticated animal wastes,

17 “(B)(i) to which section 168 applies with-
 18 out regard to any useful life, or

19 “(ii) with respect to which depreciation (or
 20 amortization in lieu of depreciation) is allowable
 21 and having a useful life (determined as of the
 22 time such property is placed in service) of 3
 23 years or more, and

24 “(C) which is owned and operated by an
 25 eligible person or a farmer-owned entity.

1 “(2) ELIGIBLE PERSON.—

2 “(A) IN GENERAL.—The term ‘eligible per-
3 son’ means a person who materially participates
4 during the taxable year in an eligible farming
5 business.

6 “(B) MATERIAL PARTICIPATION.—For
7 purposes of subparagraph (A), the determina-
8 tion of whether a person materially participates
9 in the trade or business of farming shall be
10 made in a manner similar to the manner in
11 which such determination is made under section
12 2032A(e)(6). In the case that the person is a
13 corporation, cooperative, partnership, estate, or
14 trust, such determination shall be made at the
15 shareholder, partner, or beneficial interests level
16 (as the case may be).

17 “(C) ELIGIBLE FARMING BUSINESS.—For
18 purposes of subparagraph (A), the term ‘eligible
19 farming business’ means a farming business (as
20 defined in section 263A(e)(4)) which is not a
21 passive activity (within the meaning of section
22 469(c)).

23 “(3) FARMER-OWNED ENTITY.—

24 “(A) IN GENERAL.—The term ‘farmer-
25 owned entity’ means—

1 “(i) a corporation (including an S cor-
 2 poration) in which eligible persons own 50
 3 percent or more of the total voting power
 4 of the stock and 50 percent or more (in
 5 value) of the stock,

6 “(ii) a partnership in which eligible
 7 persons own 50 percent or more of the
 8 total voting power of the profits interest
 9 and 50 percent or more (in value) of the
 10 profits interest, and

11 “(iii) a cooperative in which eligible
 12 persons own 50 percent or more of the
 13 total voting power of the member patron-
 14 age interests and 50 percent or more (in
 15 value) of the member patronage interests.

16 “(B) CONSTRUCTIVE OWNERSHIP
 17 RULES.—For purposes of subparagraph (A),
 18 rules similar to the rules of section
 19 263A(e)(2)(B) shall apply; except that, in ap-
 20 plying such rules, the members of an individ-
 21 ual’s family shall be the individuals described in
 22 subparagraph (C).

23 “(C) MEMBERS OF FAMILY.—The family
 24 of any individual shall include only his spouse
 25 and children, grandchildren, and great grand-

1 children (whether by the whole or half blood),
 2 and the spouses of his children, grandchildren,
 3 and great grandchildren, who reside in the
 4 same household or jointly operate farming busi-
 5 nesses (as defined in section 263A(e)(4)). For
 6 purposes of the preceding sentence, a child who
 7 is legally adopted, or who is placed with the
 8 taxpayer by an authorized placement agency for
 9 adoption by the taxpayer, shall be treated as a
 10 child by blood.

11 “(4) QUALIFIED INVESTMENTS.—

12 “(A) IN GENERAL.—The term ‘qualified
 13 investments’ means a payment of cash for the
 14 purchase of a qualified equity interest in a
 15 farmer-owned entity.

16 “(B) QUALIFIED EQUITY INTEREST.—The
 17 term ‘qualified equity interest’ means—

18 “(i) any stock in a domestic corpora-
 19 tion if such stock is acquired by the tax-
 20 payer after December 31, 2001, and before
 21 January 1, 2008, at its original issue (di-
 22 rectly or through an underwriter) from the
 23 corporation solely in exchange for cash,

24 “(ii) any capital or profits interest in
 25 a domestic partnership if such interest is

1 acquired by the taxpayer after December
 2 31, 2001, and before January 1, 2008, and
 3 “(iii) any patronage interest in a co-
 4 operative if such interest is acquired by the
 5 taxpayer after December 31, 2001, and be-
 6 fore January 1, 2008.

7 Rules similar to the rules of section 1202(e)(3)
 8 shall apply for purposes of this paragraph.

9 “(d) SPECIAL RULES.—For purposes of this
 10 section—

11 “(1) TREATMENT OF MARRIED INDIVIDUALS.—
 12 In the case of a separate return by a married indi-
 13 vidual (as defined in section 7703), subsection
 14 (b)(3)(A) shall be applied by substituting ‘\$15,000’
 15 for ‘\$30,000’.

16 “(2) APPLICABLE RULES.—Under regulations
 17 prescribed by the Secretary—

18 “(A) ALLOCATION OF CREDIT IN THE CASE
 19 OF ESTATES AND TRUSTS.—Rules similar to the
 20 rules of subsection (d) of section 52 shall apply.

21 “(B) CERTAIN PROPERTY NOT ELIGI-
 22 BLE.—Rules similar to the rules of section
 23 50(b) shall apply.

24 “(3) BASIS ADJUSTMENT.—For purposes of
 25 this subtitle, if a credit is allowed under this section

1 to any eligible person with respect to qualified value-
 2 added agricultural property, the basis of such prop-
 3 erty shall be reduced by the amount of the credit so
 4 allowed and increased by the amount of recapture
 5 under subsection (e).

6 “(e) RECAPTURE IN THE CASE OF CERTAIN DISPOS-
 7 TIONS.—

8 “(1) IN GENERAL.—Under regulations pre-
 9 scribed by the Secretary, rules similar to the rules
 10 of section 50(a) shall apply with respect to an eligi-
 11 ble person if, within the 5-year period beginning on
 12 the date qualified value-added agricultural property
 13 with respect to which such person was allowed a
 14 credit under subsection (a) is originally placed in
 15 service—

16 “(A) such property ceases to be qualified
 17 for purposes of this section,

18 “(B) the eligible person or the farmer-
 19 owned entity (as the case may be) disposes of
 20 all or part of such property, or

21 “(C) the eligible person or the farmer-
 22 owned entity (as the case may be) ceases to be
 23 an eligible person or farmer-owned entity for
 24 purposes of this section.

25 “(2) SPECIAL RULES IN EVENT OF DEATH.—

1 “(A) IN GENERAL.—The period in para-
 2 graph (1) shall be suspended with respect to an
 3 eligible person for the 2-year period beginning
 4 on the date of death of such person.

5 “(B) HEIRS WHO ARE ELIGIBLE PER-
 6 SONS.—In the case that an heir of an eligible
 7 person is also an eligible person, neither para-
 8 graph (1) nor subparagraph (A) of this para-
 9 graph (unless elected by such heir) shall apply
 10 with respect to the transfer of property to such
 11 heir.

12 “(f) REGULATIONS.—The Secretary shall prescribe
 13 such regulations as may be necessary to carry out the pur-
 14 poses of this section.

15 “(g) TERMINATION.—This section shall not apply to
 16 property placed in service after December 31, 2007.”.

17 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 18 NESS CREDIT.—Section 38(b) of the Internal Revenue
 19 Code of 1986 (defining current year business credit) is
 20 amended by striking “plus” at the end of paragraph (12),
 21 by striking the period at the end of paragraph (13) and
 22 inserting “, plus”, and by adding at the end the following
 23 new paragraph:

24 “(14) in the case of an eligible person (as de-
 25 fined in section 45E(c)), the value-added agricul-

1 tural property investment credit determined under
 2 section 45E(a).”.

3 (c) CREDIT ALLOWABLE AGAINST MINIMUM TAX.—

4 (1) IN GENERAL.—Subsection (c) of section 38
 5 of the Internal Revenue Code of 1986 is amended by
 6 redesignating paragraph (3) as paragraph (4) and
 7 by inserting after paragraph (2) the following new
 8 paragraph:

9 “(3) VALUE-ADDED AGRICULTURAL PROPERTY
 10 INVESTMENT CREDIT ALLOWED AGAINST MINIMUM
 11 TAX.—

12 “(A) IN GENERAL.—The amount deter-
 13 mined under paragraph (1)(A) shall be reduced
 14 by the portion of the value-added agricultural
 15 property investment credit not used against the
 16 normal limitation.

17 “(B) PORTION OF VALUE-ADDED AGRICUL-
 18 TURAL PROPERTY INVESTMENT CREDIT NOT
 19 USED AGAINST NORMAL LIMITATION.—For pur-
 20 poses of subparagraph (A), the portion of the
 21 value-added agricultural property investment
 22 credit not used against the normal limitation is
 23 the excess (if any) of—

24 “(i) the portion of the credit allowable
 25 under subsection (a) which is attributable

1 to the value-added agricultural property in-
 2 vestment credit, over

3 “(ii) the limitation of paragraph (1)
 4 (determined without regard to this para-
 5 graph) reduced by the portion of the credit
 6 under subsection (a) which is not so attrib-
 7 utable.”.

8 (2) CONFORMING AMENDMENT.—Subclause (II)
 9 of section 38(c)(2)(A)(ii) of such Code is amended
 10 by inserting “or the value-added agricultural prop-
 11 erty investment credit” after “employment credit”.

12 (d) LIMITATION ON CARRYBACK.—Subsection (d) of
 13 section 39 of the Internal Revenue Code of 1986 is amend-
 14 ed by adding at the end thereof the following new para-
 15 graph:

16 “(10) NO CARRYBACK OF VALUE-ADDED AGRI-
 17 CULTURAL PROPERTY INVESTMENT CREDIT BEFORE
 18 EFFECTIVE DATE.—No portion of the unused busi-
 19 ness credit for any taxable year which is attributable
 20 to the credit determined under section 45E may be
 21 carried back to any taxable year ending before the
 22 date of the enactment of section 45E.”.

23 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
 24 CREDITS.—Subsection (c) of section 196 of the Internal
 25 Revenue Code of 1986 is amended by striking “and” at

1 the end of paragraph (8), by striking the period at the
 2 end of paragraph (9) and inserting “, and”, and by adding
 3 after paragraph (9) the following new paragraph:

4 “(10) the value-added agricultural property in-
 5 vestment credit determined under section 45E.”.

6 (f) BASIS ADJUSTMENT.—Subsection (a) of section
 7 1016 of the Internal Revenue Code of 1986 is amended
 8 by striking “and” at the end of paragraph (26), by strik-
 9 ing the period at the end of paragraph (27) and inserting
 10 “; and”, and by adding at the end the following new para-
 11 graph:

12 “(28) to the extent provided in section
 13 45E(d)(3), in the case of payments with respect to
 14 which a credit has been allowed under section 38.”.

15 (g) CLERICAL AMENDMENT.—The table of sections
 16 for subpart D of part IV of subchapter A of chapter 1
 17 of the Internal Revenue Code of 1986 is amended by add-
 18 ing at the end thereof the following new section:

“Sec. 45E. Value-added agricultural property investment cred-
 it.”.

19 (h) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to qualified investments (as defined
 21 in section 45E(c)(5) of the Internal Revenue Code of 1986
 22 (as added by this section) made, and property placed in
 23 service, after December 31, 2001.

○