H. R. 684

To amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

IN THE HOUSE OF REPRESENTATIVES

February 14, 2011

Ms. HIRONO (for herself and Mr. JOHNSON of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REFORM OF BIODIESEL INCOME TAX INCENTIVES.

(a) In General.—Section 40A of the Internal Revenue Code of 1986 is amended to read as follows:

“SEC. 40A. BIODIESEL PRODUCTION.

“(a) In General.—For purposes of section 38, the biodiesel fuels credit determined under this section for the
taxable year is $1.00 for each gallon of biodiesel produced by the taxpayer and which during the taxable year—

“(1) is sold by such producer to another person—

“(A) for use by such other person’s trade or business (other than casual off-farm production),

“(B) for use by such other person as a fuel in a trade or business, or

“(C) who sells such biodiesel at retail to another person and places such biodiesel in the fuel tank of such other person, or

“(2) is used or sold by such producer for any purpose described in paragraph (1).

“(b) INCREASED CREDIT FOR SMALL PRODUCERS.—

“(1) IN GENERAL.—In the case of any eligible small biodiesel producer, subsection (a) shall be applied by increasing the dollar amount contained therein by 10 cents.

“(2) LIMITATION.—Paragraph (1) shall only apply with respect to the first 15,000,000 gallons of biodiesel produced by any eligible small biodiesel producer during any taxable year.

“(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this
section with respect to any biodiesel shall be properly re-
duced to take into account any benefit provided with re-
spect to such biodiesel solely by reason of the application
of section 6426 or 6427(e).

“(d) Definitions and Special Rules.—For pur-
poses of this section—

“(1) Biodiesel.—The term ‘biodiesel’ means
liquid fuel derived from biomass which meets—

“(A) the registration requirements for
fuels and fuel additives established by the Envi-
ronmental Protection Agency under section 211
of the Clean Air Act (42 U.S.C. 7545), and

“(B) the requirements of the American So-
ciety of Testing and Materials D6751.

Such term shall not include any liquid with respect
to which a credit may be determined under section
40.

“(2) Biodiesel not used as fuel.—If—

“(A) any credit was determined with re-
spect to any biodiesel under this section, and

“(B) any person does not use such fuel for
the purpose described in subsection (a),
then there is hereby imposed on such person a tax
equal to the product of the rate applicable under
subsection (a) and the number of gallons of such biodiesel.

“(3) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

“(4) LIMITATION TO BIODIESEL PRODUCED IN THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel unless such biodiesel is produced in the United States from raw feedstock. For purposes of this paragraph, the term ‘United States’ includes any possession of the United States.

“(5) LIMITATION TO BIODIESEL WITH CONNECTION TO THE UNITED STATES.—No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term ‘United States’ includes any possession of the United States.

“(6) BIODIESEL TRANSFERS FROM AN IRS REGISTERED BIODIESEL PRODUCTION FACILITY TO AN IRS REGISTERED TERMINAL OR REFINERY.—Credit allowed under subsection (a) shall be allowed to the terminal or refinery referred to in section

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4081(a)(1)(B)(i) in instances where section 4081(a)(1)(B)(iii) is applicable. Credit allowed under subsection (a) cannot be claimed by a terminal or refinery on fuel upon which the credit was previously claimed by a biodiesel producer.

“(e) Definitions and Special Rules for Small Biodiesel Producers.—

“(1) Eligible small biodiesel producer.—
The term ‘eligible small biodiesel producer’ means a person who, at all times during the taxable year, has a productive capacity for biodiesel not in excess of 60,000,000 gallons.

“(2) Aggregation rule.—For purposes of the 15,000,000 gallon limitation under subsection (b)(2) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

“(3) Partnership, S corporation, and other pass-thru entities.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(2)
and paragraph (1) shall be applied at the entity level and at the partner or similar level.

“(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

“(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

“(A) to prevent the credit provided for in subsection (b) from directly or indirectly benefitting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of biodiesel during the taxable year, or

“(B) to prevent any person from directly or indirectly benefitting with respect to more than 15,000,000 gallons during the taxable year.

“(6) ALLOCATION OF SMALL BIODIESEL CREDIT TO PATRONS OF COOPERATIVE.—

“(A) ELECTION TO ALLOCATE.—

“(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the increase determined under subsection (b) for the
taxable year may, at the election of the organization, be apportioned pro rata among 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. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

“(B) Treatment of organizations and patrons.—

“(i) Organizations.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (b) for the taxable year of the organization.

“(ii) Patrons.—The amount of the credit apportioned to patrons pursuant to
subparagraph (A) shall be included in the
amount determined under such subsection
for the first taxable year of each patron
ending on or after the last day of the pay-
ment period (as defined in section
1382(d)) for the taxable year of the orga-
nization or, if earlier, for the taxable year
of each patron ending on or after the date
on which the patron receives notice from
the cooperative of the apportionment.

“(iii) Special rules for decrease
in credits for taxable year.—If the
amount of the credit of the organization
determined under such subsection for a
taxable year is less than the amount of
such credit shown on the return of the or-
ganization for such year, an amount equal
to the excess of—

“(I) such reduction, over
“(II) the amount not apportioned
to such patrons under subparagraph
(A) for the taxable year, shall be
treated as an increase in tax imposed
by this chapter on the organization.
Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

“(f) RENEWABLE DIESEL.—For purposes of this title—

“(1) TREATMENT IN THE SAME MANNER AS BIODIESEL.—Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.

“(2) EXCEPTION.—Subsection (b) shall not apply with respect to renewable diesel.

“(3) RENEWABLE DIESEL DEFINED.—The term ‘renewable diesel’ means liquid fuel derived from biomass which meets—

“(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

“(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary.

Such term shall not include any liquid with respect to which a credit may be determined under section
40. Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term ‘biomass’ has the meaning given such term by section 45K(c)(3).

“(4) CERTAIN AVIATION FUEL.—Except as provided in the last 3 sentences of paragraph (3), the term ‘renewable diesel’ shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.

“(g) TERMINATION.—This section shall not apply to any sale or use after December 31, 2016.”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 40A and inserting the following new item:

“Sec. 40A. Biodiesel production.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to biodiesel sold or used after December 31, 2011.

SEC. 2. REFORM OF BIODIESEL EXCISE TAX INCENTIVES.

(a) IN GENERAL.—Subsection (c) of section 6426 of the Internal Revenue Code of 1986 is amended to read as follows:
“(c) Biodiesel Credit.—

“(1) In general.—For purposes of this section, the biodiesel credit is $1.00 for each gallon of biodiesel produced by the taxpayer and which—

“(A) is sold by such producer to another person—

“(i) for use by such other person’s trade or business (other than casual off-farm production),

“(ii) for use by such other person as a fuel in a trade or business, or

“(iii) who sells such biodiesel at retail to another person and places such biodiesel in the fuel tank of such other person, or

“(B) is used or sold by such producer for any purpose described in subparagraph (A).

“(2) Definitions.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

“(3) Biodiesel transfers from an IRS registered biodiesel production facility to an IRS registered terminal.—Credit allowed under this subsection can be claimed by a registered terminal or refinery in instances where section 4081(a)(1)(B) is applicable. Credit allowed under
this subsection cannot be claimed by a terminal or refinery on fuel upon which the credit was previously claimed by a biodiesel producer.

“(4) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2016.”.

(b) PAYMENT OF CREDIT.—Subsection (e) of section 6427 of such Code is amended—

(1) by striking “or the biodiesel mixture credit” in paragraph (1),

(2) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) BIODIESEL CREDIT.—If any person produces biodiesel and sells or uses such biodiesel as provided in section 6426(c), the Secretary shall pay (without interest) to such person an amount equal to the biodiesel credit with respect to such biodiesel.”,

(3) by striking “paragraph (1) or (2)” each place it appears in paragraphs (4) and (6), as redesignated by paragraph (2), and inserting “paragraph (1), (2), or (3)”,

(4) by striking “paragraph (1), (2), or (3)”,
(4) by striking “alternative fuel” each place it appears in paragraphs (4) and (6), as redesignated by paragraph (2), and inserting “fuel”, and

(5) by striking “biodiesel mixture (as defined in section 6426(c)(3))” in paragraph (7)(B), as so redesignated, and inserting “biodiesel (within the meaning of section 40A)”.

(c) Exemption for Transfers Between Registered Facilities.—Subparagraph (B) of section 4081(a)(1) of such Code is amended by adding at the end the following new clause:

“(iii) The tax imposed by this paragraph shall not apply to biodiesel that is removed from a registered IRS biodiesel plant and is transferred to a IRS registered terminal or refinery.”.

(d) Producer Registration Requirement.—Subsection (a) of section 6426 of such Code is amended by striking “subsections (d) and (e)” in the flush sentence at the end and inserting “subsections (c), (d), and (e)”.  

(e) Recapture.—Subsection (f) of section 6426 of such Code is amended to read as follows:

“(f) Recapture.—

“(1) Alcohol Fuel Mixtures.—If—
“(A) any credit was determined under this section with respect to alcohol used in the production of any alcohol fuel mixture, and

“(B) any person—

“(i) separates the alcohol from the mixture, or

“(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol.

“(2) BIODIESEL.—If any credit was determined under this section with respect to the production of any biodiesel and any person does not use such biodiesel for a purpose described in subsection (c)(1), then there is hereby imposed on such person a tax equal to $1 for each gallon of such biodiesel.

“(3) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) or (2) as if such tax were imposed by section 4081 and not by this section.”.

(f) CLERICAL AMENDMENT.—The heading of section 6426 of such Code (and the item relating to such section
in the table of sections for subchapter B of chapter 65 of such Code) is amended by striking “alcohol fuel, biodiesel, and alternative fuel mixtures” and inserting “alcohol fuel mixtures, biodiesel production, and alternative fuel mixtures”.

(g) Effective Date.—The amendments made by this section shall apply to biodiesel sold or used after December 31, 2011.

SEC. 3. BIODIESEL TREATED AS TAXABLE FUEL.

(a) Biodiesel Treated as Taxable Fuel.—Clause (i) of section 4083(a)(3)(A) of such Code is amended by inserting “, including biodiesel (as defined in section 6426(c)(3)),” after “(other than gasoline)”.

(b) Effective Date.—The amendment made by this section shall apply to biodiesel removed, entered, or sold after the date which is 6 months after the date of the enactment of this Act.