

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE

Section 232(h)(1), (4) of Pub. L. 96-223, as amended by Pub. L. 97-448, title II, §202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

“(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

“(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980.”

§ 40A. Biodiesel and renewable diesel used as fuel

(a) General rule

For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

- (1) the biodiesel mixture credit, plus
- (2) the biodiesel credit, plus
- (3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) Definition of biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

For purposes of this section—

(1) Biodiesel mixture credit

(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is \$1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) Qualified biodiesel mixture

The term “qualified biodiesel mixture” means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

- (i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or
- (ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

- (i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
- (ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) Biodiesel credit

(A) In general

The biodiesel credit of any taxpayer for any taxable year is \$1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

- (i) is used by the taxpayer as a fuel in a trade or business, or
- (ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

(B) User credit not to apply to biodiesel sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Certification for biodiesel

No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) Small agri-biodiesel producer credit

(A) In general

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) Qualified agri-biodiesel production

For purposes of this paragraph, the term “qualified agri-biodiesel production” means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

- (i) is sold by such producer to another person—
 - (I) for use by such other person in the production of a qualified biodiesel mixture in 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 agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or
- (ii) is used or sold by such producer for any purpose described in clause (i).

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(c) Coordination with credit against excise tax

The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Biodiesel

The term “biodiesel” means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

(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 D6751.

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

(2) Agri-biodiesel

The term “agri-biodiesel” means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(3) Mixture or biodiesel not used as a fuel, etc.**(A) Mixtures**

If—

(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

(ii) any person—

(I) separates the biodiesel 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 rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

(B) Biodiesel

If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) Producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.

(D) 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 subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) 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.

(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.

(e) Definitions and special rules for small agri-biodiesel producer credit

For purposes of this section—

(1) Eligible small agri-biodiesel producer

The term “eligible small agri-biodiesel producer” means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

(2) Aggregation rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) 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)(4)(C) 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 (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

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

(6) Allocation of small agri-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 credit determined under subsection

(a)(3) 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 (a)(3) 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 payment period (as defined in section 1382(d)) for the taxable year of the organization 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 organization 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)(4) 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

(A) In general

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.

(B) Application of mixture credits

In the case of fuel which is treated as renewable diesel solely by reason of subparagraph (A), subsection (b)(1) and section 6426(c) shall be applied with respect to such fuel by treating kerosene as though it were diesel fuel.

(g) Termination

This section shall not apply to any sale or use after December 31, 2011.

(Added Pub. L. 108-357, title III, §302(a), Oct. 22, 2004, 118 Stat. 1463; amended Pub. L. 109-58, title XIII, §§1344(a), 1345(a)-(d), 1346(a), (b)(1), Aug. 8, 2005, 119 Stat. 1052-1055; Pub. L. 109-135, title IV, §412(h), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 110-234, title XV, §15321(f), May 22, 2008, 122 Stat. 1514; Pub. L. 110-246, §4(a), title XV, §15321(f), June 18, 2008, 122 Stat. 1664, 2276; Pub. L. 110-343, div. B, title II, §§202(a), (b)(1), (b)(3)-(f), 203(b), Oct. 3, 2008, 122 Stat. 3832, 3833; Pub. L. 111-312, title VII, §701(a), Dec. 17, 2010, 124 Stat. 3310.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (b)(1)(A), (2)(A). Pub. L. 110-343, §202(b)(1), substituted “\$1.00” for “50 cents”.

Subsec. (b)(3) to (5). Pub. L. 110-343, §202(b)(3)(A), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out heading and text of former par. (3). Text read as follows: “In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting ‘\$1.00’ for ‘50 cents.’”

Subsec. (d)(1). Pub. L. 110-246, §15321(f)(1), inserted concluding provisions.

Subsec. (d)(2). Pub. L. 110-343, §202(f), substituted “mustard seeds, and camelina” for “and mustard seeds”.

Subsec. (d)(3)(C)(ii). Pub. L. 110-343, § 202(b)(3)(D), substituted “subsection (b)(4)(B)” for “subsection (b)(5)(B)”.

Subsec. (d)(5). Pub. L. 110-343, § 203(b), added par. (5).
Subsec. (e)(2), (3). Pub. L. 110-343, § 202(b)(3)(C), substituted “subsection (b)(4)(C)” for “subsection (b)(5)(C)”.

Subsec. (f)(2). Pub. L. 110-343, § 202(b)(3)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

“(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting ‘\$1.00’ for ‘50 cents’.

“(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel.”

Subsec. (f)(3). Pub. L. 110-343, § 202(d), in introductory provisions, struck out “(as defined in section 45K(c)(3))” after “derived from biomass” and, in concluding provisions, inserted at end “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).”

Pub. L. 110-343, § 202(c)(1), (2), in introductory provisions, substituted “liquid fuel” for “diesel fuel” and struck out “using a thermal depolymerization process” before “which meets—”.

Pub. L. 110-246, § 15321(f)(2), inserted concluding provisions.

Subsec. (f)(3)(B). Pub. L. 110-343, § 202(c)(3), inserted “, or other equivalent standard approved by the Secretary” before period at end.

Subsec. (f)(4). Pub. L. 110-343, § 202(e), added par. (4).
Subsec. (g). Pub. L. 110-343, § 202(a), substituted “December 31, 2009” for “December 31, 2008”.

2005—Pub. L. 109-58, § 1346(b)(1), inserted “and renewable diesel” after “Biodiesel” in section catchline.

Subsec. (a). Pub. L. 109-58, § 1345(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

- “(1) the biodiesel mixture credit, plus
- “(2) the biodiesel credit.”

Subsec. (b). Pub. L. 109-58, § 1345(d)(2), substituted “, biodiesel credit, and small agri-biodiesel producer credit” for “and biodiesel credit” in heading.

Subsec. (b)(4). Pub. L. 109-58, § 1345(d)(1), substituted “paragraph (1) or (2) of subsection (a)” for “this section”.

Subsec. (b)(5). Pub. L. 109-58, § 1345(b), added par. (5).

Subsec. (b)(5)(B). Pub. L. 109-135 struck out “(determined without regard to the last sentence of subsection (d)(2))” after “any agri-biodiesel” in introductory provisions.

Subsec. (d)(3)(C), (D). Pub. L. 109-58, § 1345(d)(3), added subpar. (C) and redesignated former subpar. (C) as (D). The words following “subsection (b)(5)(B),” in subpar. (C) are shown as a flush provision notwithstanding directory language showing them as part of cl. (ii), to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 109-58, § 1345(c), added subsec. (e). The words following “subparagraph (A) for the taxable year,” in subsec. (e)(6)(B)(iii) are shown as a flush provision notwithstanding directory language showing them as part of subcl. (II), to reflect the probable intent of Congress. Former subsec. (e) redesignated (f).

Pub. L. 109-58, § 1344(a), substituted “2008” for “2006”.
Subsec. (f). Pub. L. 109-58, § 1346(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109-58, § 1345(c), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109-58, § 1346(a), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, § 701(d), Dec. 17, 2010, 124 Stat. 3310, provided that: “The amendments made by this section [amending this section and sections 6426

and 6427 of this title] shall apply to fuel sold or used after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title II, § 202(g), Oct. 3, 2008, 122 Stat. 3833, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel produced, and sold or used, after December 31, 2008.

“(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendment made by subsection (d) [amending this section] shall apply to fuel produced, and sold or used, after the date of the enactment of this Act [Oct. 3, 2008].”

Amendment by section 203(b) of Pub. L. 110-343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110-343, set out as a note under section 40 of this title.

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(f) of Pub. L. 110-246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110-246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XIII, § 1344(b), Aug. 8, 2005, 119 Stat. 1052, provided that: “The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].”

Pub. L. 109-58, title XIII, § 1345(e), Aug. 8, 2005, 119 Stat. 1055, provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].”

Pub. L. 109-58, title XIII, § 1346(c), Aug. 8, 2005, 119 Stat. 1056, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fuel sold or used after December 31, 2005.”

EFFECTIVE DATE

Section applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 41. Credit for increasing research activities

(a) General rule

For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

- (1) 20 percent of the excess (if any) of—
 - (A) the qualified research expenses for the taxable year, over
 - (B) the base amount,

- (2) 20 percent of the basic research payments determined under subsection (e)(1)(A), and

(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium for energy research.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term “qualified research expenses” means the sum of the following amounts