

107TH CONGRESS
1ST SESSION

S. 613

To amend the Internal Revenue Code of 1986 to enhance the use of the small ethanol producer credit.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2001

Mr. FITZGERALD 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 enhance the use of the small ethanol producer credit.

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. SMALL ETHANOL PRODUCER CREDIT.**

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

9 “(6) ALLOCATION OF SMALL ETHANOL PRO-
10 DUCER 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.

“(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.

“(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the return of the cooperative 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

1 amount of any credit under this subpart or sub-
 2 part A, B, E, or G.”.

3 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
 4 CREDIT.—

5 (1) DEFINITION OF SMALL ETHANOL PRO-
 6 DUCER.—Section 40(g) of the Internal Revenue
 7 Code of 1986 (relating to definitions and special
 8 rules for eligible small ethanol producer credit) is
 9 amended by striking “30,000,000” each place it ap-
 10 pears and inserting “60,000,000”.

11 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
 12 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
 13 469(d)(2)(A) of such Code is amended by striking
 14 “subpart D” and inserting “subpart D, other than
 15 section 40(a)(3),”.

16 (3) ALLOWING CREDIT AGAINST MINIMUM
 17 TAX.—

18 (A) IN GENERAL.—Subsection (c) of sec-
 19 tion 38 of such Code (relating to limitation
 20 based on amount of tax) is amended by redesign-
 21 ating paragraph (3) as paragraph (4) and by
 22 inserting after paragraph (2) the following new
 23 paragraph:

24 “(3) SPECIAL RULES FOR SMALL ETHANOL
 25 PRODUCER CREDIT.—

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

3 “(i) this section and section 39 shall
4 be applied separately with respect to the
5 credit, and

6 “(ii) in applying paragraph (1) to the
7 credit—

8 “(I) subparagraphs (A) and (B)
9 thereof shall not apply, and

10 “(II) the limitation under para-
11 graph (1) (as modified by subclause
12 (I)) shall be reduced by the credit al-
13 lowed under subsection (a) for the
14 taxable year (other than the small
15 ethanol producer credit).

16 “(B) SMALL ETHANOL PRODUCER CRED-
17 IT.—For purposes of this subsection, the term
18 ‘small ethanol producer credit’ means the credit
19 allowable under subsection (a) by reason of sec-
20 tion 40(a)(3).”.

21 (B) CONFORMING AMENDMENT.—Sub-
22 clause (II) of section 38(c)(2)(A)(ii) of such
23 Code is amended by striking “(other” and all
24 that follows through “credit)” and inserting
25 “(other than the empowerment zone employ-

1 ment credit or the small ethanol producer cred-
2 it)’’.

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

7 **“SEC. 87. ALCOHOL FUEL CREDIT.**

8 “Gross income includes an amount equal to the sum
9 of—

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

13 “(2) the alcohol credit determined with respect
14 to the taxpayer for the taxable year under section
15 40(a)(2).”.

16 (c) CONFORMING AMENDMENT.—Section 1388 of
17 such Code (relating to definitions and special rules for co-
18 operative organizations) is amended by adding at the end
19 the following new subsection:

20 “(k) CROSS REFERENCE.—For provisions relating to
21 the apportionment of the alcohol fuels credit between coop-
22 erative organizations and their patrons, see section
23 40(g)(6).”.

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

