

108TH CONGRESS  
1ST SESSION

# H. R. 1447

To amend the Internal Revenue Code of 1986 to provide incentives to increase the sale and use of certain ethanol and biodiesel fuels.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2003

Mr. LEWIS of Kentucky introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to increase the sale and use of certain ethanol and biodiesel fuels.

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 “Ethanol and Biodiesel  
5       Promotion Act of 2003”.

6       **SEC. 2. CREDIT FOR PROPERTY USED IN THE RETAIL SALE,**  
7                       **OR BUSINESS USE, OF E85 ETHANOL AND**  
8                       **NEAT BIODIESEL.**

9       (a) IN GENERAL.—Subpart D of part IV of sub-  
10      chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by  
 2 adding at the end the following new section:

3 **“SEC. 45G. PROPERTY USED IN THE RETAIL SALE, OR BUSI-**  
 4 **NESS USE, OF E85 ETHANOL AND NEAT BIO-**  
 5 **DIESEL.**

6 “(a) GENERAL RULE.—For purposes of section 38,  
 7 the E85 ethanol and biodiesel credit is an amount equal  
 8 to 50 percent of the basis of qualified fuel property placed  
 9 in service by the taxpayer during the taxable year.

10 “(b) LIMITATION.—The credit allowed by subsection  
 11 (a) for any taxable year shall not exceed \$50,000.

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

13 “(1) QUALIFIED FUEL PROPERTY.—The term  
 14 ‘qualified fuel property’ means—

15 “(A) qualified vehicle refueling property,  
 16 and

17 “(B) qualified business use property.

18 “(2) QUALIFIED VEHICLE REFUELING PROP-  
 19 erty.—The term ‘qualified vehicle refueling prop-  
 20 erty’ means any property which would be qualified  
 21 clean-fuel vehicle refueling property, as defined in  
 22 section 179A(d), if the only clean-burning fuel re-  
 23 ferred to in such section were E85 ethanol and neat  
 24 biodiesel.

1           “(3) QUALIFIED BUSINESS USE PROPERTY.—

2           The term ‘qualified business use property’ means  
3           any property (not including a building and its struc-  
4           tural components) if—

5                   “(A) such property is of a character sub-  
6                   ject to the allowance for depreciation,

7                   “(B) the original use of such property be-  
8                   gins with the taxpayer, and

9                   “(C) such property is used by the taxpayer  
10                  in the consumption of E85 ethanol or neat bio-  
11                  diesel in a trade of business of the taxpayer.

12                  “(4) E85 ETHANOL.—The term ‘E85 ethanol’  
13                  means any fuel at least 85 percent of which is eth-  
14                  anol.

15                  “(5) NEAT BIODIESEL.—The term ‘neat bio-  
16                  diesel’ means diesel fuel at least 85 percent of which  
17                  is produced from a substance other than petroleum.

18                  “(d) TERMINATION.—This section shall not apply to  
19                  any property placed in service after December 31, 2009.”.

20                  (b) CONFORMING AMENDMENTS.—

21                   (1) Section 38(b) of such Code is amended by  
22                   striking “plus” at the end of paragraph (14), by  
23                   striking the period at the end of paragraph (15) and  
24                   inserting “, plus”, and by adding at the end the fol-  
25                   lowing:

1 “(16) the E85 ethanol and biodiesel credit de-  
 2 termined under section 45G.”.

3 (2) Section 39(d) of such Code (relating to  
 4 transitional rules) is amended by adding at the end  
 5 the following:

6 “(11) NO CARRYBACK OF SECTION 45G CREDIT  
 7 BEFORE EFFECTIVE DATE.—No portion of the un-  
 8 used business credit for any taxable year which is  
 9 attributable to the credit determined under section  
 10 45G(a) may be carried back to a taxable year ending  
 11 before January 1, 2003.”.

12 (3) The table of sections for subpart D of part  
 13 IV of subchapter A of chapter 1 of such Code is  
 14 amended by adding at the end the following:

“Sec. 45G. Property used in the retail sale, or business use, of  
 E85 ethanol and neat biodiesel.”.

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to taxable years beginning after  
 17 December 31, 2003.

18 **SEC. 3. CREDIT FOR RETAIL SALE OF E85 ETHANOL AND**  
 19 **NEAT BIODIESEL AS MOTOR VEHICLE FUEL.**

20 (a) IN GENERAL.—Subpart D of part IV of sub-  
 21 chapter A of chapter 1 of the Internal Revenue Code of  
 22 1986 (relating to business related credits) is amended by  
 23 adding at the end the following new section:

1 **“SEC. 45H. RETAIL SALE OF E85 ETHANOL AND NEAT BIO-**  
 2 **DIESEL AS MOTOR VEHICLE FUEL.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
 4 the E85 ethanol and biodiesel retail sales credit of any  
 5 taxpayer for any taxable year is the credit amount for each  
 6 gasoline gallon equivalent of E85 ethanol and neat bio-  
 7 diesel sold at retail by the taxpayer during such year as  
 8 a fuel to propel any qualified motor vehicle.

9 “(b) DEFINITIONS.—For purposes of this section—

10 “(1) CREDIT AMOUNT.—The term ‘credit  
 11 amount’ means—

12 “(A) in the case of E85 ethanol, the excess  
 13 of 60 cents over the blender amount applicable  
 14 under section 40(h) for the calendar year in  
 15 which the sale occurs, and

16 “(B) in the case of neat biodiesel, 25  
 17 cents.

18 “(2) E85 ETHANOL AND NEAT BIODIESEL.—  
 19 The terms ‘E85 ethanol’ and ‘neat biodiesel’ have  
 20 the respective meanings given such terms by section  
 21 45G.

22 “(3) GASOLINE GALLON EQUIVALENT.—The  
 23 term ‘gasoline gallon equivalent’ means, with respect  
 24 to any alternative fuel, the amount (determined by  
 25 the Secretary) of such fuel having a Btu content of  
 26 114,000.

1           “(4) QUALIFIED MOTOR VEHICLE.—The term  
2           ‘qualified motor vehicle’ means any motor vehicle (as  
3           defined in section 179A(e)(2)) which meets any ap-  
4           plicable Federal or State emissions standards with  
5           respect to each fuel by which such vehicle is de-  
6           signed to be propelled.

7           “(5) SOLD AT RETAIL.—

8                   “(A) IN GENERAL.—The term ‘sold at re-  
9                   tail’ means the sale, for a purpose other than  
10                  resale, after manufacture, production, or impor-  
11                  tation.

12                  “(B) USE TREATED AS SALE.—If any per-  
13                  son uses E85 ethanol or neat biodiesel as a fuel  
14                  to propel any qualified motor vehicle (including  
15                  any use after importation) before such fuel is  
16                  sold at retail, then such use shall be treated in  
17                  the same manner as if such fuel were sold at  
18                  retail as a fuel to propel such a vehicle by such  
19                  person.

20           “(c) NO DOUBLE BENEFIT.—The amount of any de-  
21           duction or credit allowable under this chapter for any fuel  
22           taken into account in computing the amount of the credit  
23           determined under subsection (a) shall be reduced by the  
24           amount of such credit attributable to such fuel.

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

5       “(e) TERMINATION.—This section shall not apply to  
 6 any fuel sold at retail after December 31, 2009.”.

7       (b) CONFORMING AMENDMENTS.—

8           (1) Section 38(b) of such Code is amended by  
 9 striking “plus” at the end of paragraph (15), by  
 10 striking the period at the end of paragraph (16) and  
 11 inserting “, plus”, and by adding at the end the fol-  
 12 lowing:

13           “(17) the E85 ethanol and biodiesel retail sales  
 14 credit determined under section 45H.”.

15           (2) Section 39(d) of such Code (relating to  
 16 transitional rules) is amended by adding at the end  
 17 the following:

18           “(12) NO CARRYBACK OF SECTION 45H CREDIT  
 19 BEFORE EFFECTIVE DATE.—No portion of the un-  
 20 used business credit for any taxable year which is  
 21 attributable to the credit determined under section  
 22 45H(a) may be carried back to a taxable year end-  
 23 ing before January 1, 2004.”.

1           (3) The table of sections for subpart D of part  
 2           IV of subchapter A of chapter 1 of such Code is  
 3           amended by adding at the end the following:

“Sec. 45G. Retail sale of E85 ethanol and neat biodiesel as motor  
 vehicle fuel.”.

4           (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to fuel sold at retail after Decem-  
 6 ber 31, 2003, in taxable years ending after such date.

7 **SEC. 4. SMALL ETHANOL PRODUCER CREDIT.**

8           (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
 9 PATRONS OF A COOPERATIVE.—Section 40(g) Internal  
 10 Revenue Code of 1986 (relating to definitions and special  
 11 rules for eligible small ethanol producer credit) is amended  
 12 by adding at the end the following:

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

15           “(A) ELECTION TO ALLOCATE.—

16           “(i) IN GENERAL.—Notwithstanding  
 17 paragraph (4), in the case of a cooperative  
 18 organization described in section 1381(a),  
 19 any portion of the credit determined under  
 20 subsection (a)(3) for the taxable year may,  
 21 at the election of the organization, be ap-  
 22 portioned pro rata among patrons of the  
 23 organization on the basis of the quantity



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

3 “(ii) FORM AND EFFECT OF ELEC-  
4 TION.—An election under clause (i) for any  
5 taxable year shall be made on a timely  
6 filed return for such year. Such election,  
7 once made, shall be irrevocable for such  
8 taxable year.

9 “(iii) SPECIAL RULE FOR TAXABLE  
10 YEARS PRIOR TO ENACTMENT OF PARA-  
11 GRAPH.—Notwithstanding clause (ii), an  
12 election for any taxable year ending prior  
13 to the date of the enactment of this para-  
14 graph may be made at any time before the  
15 expiration of the 3-year period beginning  
16 on the last date prescribed by law for filing  
17 the return of the taxpayer for such taxable  
18 year (determined without regard to exten-  
19 sions) by filing an amended return for  
20 such year.

21 “(B) TREATMENT OF ORGANIZATIONS AND  
22 PATRONS.—The amount of the credit appor-  
23 tioned to patrons under subparagraph (A)—

24 “(i) shall not be included in the  
25 amount determined under subsection (a)

1 with respect to the organization for the  
2 taxable year,

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

9 “(iii) shall be included in gross income  
10 of such patrons for the taxable year in the  
11 manner and to the extent provided in sec-  
12 tion 87.

13 “(C) SPECIAL RULES FOR DECREASE IN  
14 CREDITS FOR TAXABLE YEAR.—If the amount  
15 of the credit of a cooperative organization (as  
16 so defined) determined under subsection (a)(3)  
17 for a taxable year is less than the amount of  
18 such credit shown on the return of the coopera-  
19 tive organization for such year, an amount  
20 equal to the excess of—

21 “(i) such reduction, over

22 “(ii) the amount not apportioned to  
23 such patrons under subparagraph (A) for  
24 the taxable year,

1           shall be treated as an increase in tax imposed  
 2           by this chapter on the organization. Such in-  
 3           crease shall not be treated as tax imposed by  
 4           this chapter for purposes of determining the  
 5           amount of any credit under this subpart or sub-  
 6           part A, B, E, or G.”.

7           (b) DEFINITION OF SMALL ETHANOL PRODUCER;  
 8 IMPROVEMENTS TO SMALL ETHANOL PRODUCER  
 9 CREDIT.—

10           (1) DEFINITION OF SMALL ETHANOL PRO-  
 11 DUCER.—Section 40(g)(1) of the Internal Revenue  
 12 Code of 1986 (relating to eligible small ethanol pro-  
 13 ducer) is amended by striking “30,000,000” and in-  
 14 serting “60,000,000”.

15           (2) SMALL ETHANOL PRODUCER CREDIT NOT A  
 16 PASSIVE ACTIVITY CREDIT.—Clause (i) of section  
 17 469(d)(2)(A) of such Code (relating to passive activ-  
 18 ity credit) is amended by striking “subpart D” and  
 19 inserting “subpart D, other than section 40(a)(3),”.

20           (3) ALLOWING CREDIT AGAINST MINIMUM  
 21 TAX.—

22           (A) IN GENERAL.—Subsection (c) of sec-  
 23 tion 38 of such Code (relating to limitation  
 24 based on amount of tax) is amended by redesign-

1 nating paragraph (4) as paragraph (5) and by  
2 inserting after paragraph (3) the following:

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

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

7 “(i) this section and section 39 shall  
8 be applied separately with respect to the  
9 credit, and

10 “(ii) in applying paragraph (1) to the  
11 credit—

12 “(I) subparagraphs (A) and (B)  
13 thereof shall not apply, and

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

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

1 (B) CONFORMING AMENDMENT.—Sub-  
 2 clause (II) of section 38(c)(2)(A)(ii) and of sec-  
 3 tion 38(c)(3)(A)(ii) of such Code are both  
 4 amended by inserting “or the small ethanol pro-  
 5 ducer credit” after “the New York Liberty  
 6 Zone business employee credit”.

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

11 **“SEC. 87. ALCOHOL FUEL CREDIT.**

12 “Gross income includes an amount equal to the sum  
 13 of—

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

17 “(2) the alcohol credit determined with respect  
 18 to the taxpayer for the taxable year under section  
 19 40(a)(2).”.

20 (c) CONFORMING AMENDMENT.—Section 1388 of the  
 21 Internal Revenue Code of 1986 (relating to definitions and  
 22 special rules for cooperative organizations) is amended by  
 23 adding at the end the following:

24 “(k) CROSS REFERENCE.—For provisions relating to  
 25 the apportionment of the alcohol fuels credit between coop-

1 erative organizations and their patrons, see section  
2 40(d)(6).”

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2003.

6 **SEC. 5. EXTENSION OF EXPENSING OF VEHICLE REFUEL-**  
7 **ING PROPERTY FOR E85 ETHANOL.**

8 Subsection (f) of section 179A of the Internal Rev-  
9 enue Code of 1986 (relating to termination) is amended  
10 by inserting before the period “(December 31, 2009, for  
11 property which is qualified clean-fuel vehicle refueling  
12 property with respect to fuel at least 85 percent of which  
13 is ethanol)”.

14 **SEC. 6. REPEAL OF LIMITATION ON DEPOSITS INTO HIGH-**  
15 **WAY TRUST FUND WITH RESPECT TO ALCO-**  
16 **HOL FUELS.**

17 (a) IN GENERAL.—Paragraph (4) of section 9503(b)  
18 of the Internal Revenue Code of 1986 (relating to certain  
19 taxes not transferred to Highway Trust Fund) is amended  
20 by adding “and” at the end of subparagraph (C), by strik-  
21 ing the comma at the end of subparagraph (D) and insert-  
22 ing a period, and by striking subparagraphs (E) and (F).

1       (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to taxes received in the Treasury  
3 after December 31, 2003.

○