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H. R. 3119

To amend the Internal Revenue Code of 1986 to allow a credit against income tax for biodiesel used as a fuel.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2003

Mr. HULSHOF (for himself, Mr. POMEROY, Mr. NUSSLE, Mr. YOUNG of Alaska, Mr. OBERSTAR, Mr. STENHOLM, Mrs. EMERSON, Mr. GRAVES, Mr. SKELTON, Mr. AKIN, and Mr. BOEHNER) 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 allow a credit against income tax for biodiesel used as a fuel.

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 “Renewable Fuels and
5 Transportation Infrastructure Enhancement Act of
6 2003”.

1 **SEC. 2. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE**
2 **TAX CREDIT.**

3 (a) IN GENERAL.—Subchapter B of chapter 65 of the
4 Internal Revenue Code of 1986 (relating to rules of special
5 application) is amended by inserting after section 6425
6 the following new section:

7 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
8 **MIXTURES.**

9 “(a) ALLOWANCE OF CREDITS.—There shall be al-
10 lowed as a credit against the tax imposed by section 4081
11 an amount equal to the sum of—

12 “(1) the alcohol fuel mixture credit, plus

13 “(2) the biodiesel mixture credit.

14 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, the alcohol fuel mixture credit is the product
17 of the applicable amount and the number of gallons
18 of alcohol used by the taxpayer in producing any al-
19 cohool fuel mixture.

20 “(2) APPLICABLE AMOUNT.—For purposes of
21 this subsection—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the applicable amount is 52
24 cents (51 cents in the case of any sale or use
25 after 2004).

1 “(B) MIXTURES NOT CONTAINING ETH-
2 ANOL.—In the case of an alcohol fuel mixture
3 in which none of the alcohol consists of ethanol,
4 the applicable amount is 60 cents.

5 “(3) ALCOHOL FUEL MIXTURE.—For purposes
6 of this subsection, the term ‘alcohol fuel mixture’
7 means a mixture of alcohol and a taxable fuel
8 which—

9 “(A) is sold by the taxpayer producing
10 such mixture to any person for use as a fuel,

11 “(B) is used as a fuel by the taxpayer pro-
12 ducing such mixture, or

13 “(C) is removed from the refinery by a
14 person producing such mixture.

15 “(4) OTHER DEFINITIONS.—For purposes of
16 this subsection—

17 “(A) ALCOHOL.—The term ‘alcohol’ in-
18 cludes methanol and ethanol but does not in-
19 clude—

20 “(i) alcohol produced from petroleum,
21 natural gas, or coal (including peat), or

22 “(ii) alcohol with a proof of less than
23 190 (determined without regard to any
24 added denaturants).

1 Such term also includes an alcohol gallon equiv-
2 alent of ethyl tertiary butyl ether or other
3 ethers produced from such alcohol.

4 “(B) TAXABLE FUEL.—The term ‘taxable
5 fuel’ has the meaning given such term by sec-
6 tion 4083(a)(1).

7 “(5) TERMINATION.—This subsection shall not
8 apply to any sale or use for any period after Decem-
9 ber 31, 2010.

10 “(c) BIODIESEL MIXTURE CREDIT.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, the biodiesel mixture credit is the product of
13 the applicable amount and the number of gallons of
14 biodiesel used by the taxpayer in producing any
15 qualified biodiesel mixture.

16 “(2) APPLICABLE AMOUNT.—For purposes of
17 this subsection—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the applicable amount is 50
20 cents.

21 “(B) AMOUNT FOR AGRI-BIODIESEL.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii), in the case of any biodiesel which is
24 agri-biodiesel, the applicable amount is
25 \$1.00.

1 “(ii) CERTIFICATION FOR AGRI-BIO-
2 DIESEL.—Clause (i) shall apply only if the
3 taxpayer described in paragraph (1) ob-
4 tains a certification (in such form and
5 manner as prescribed by the Secretary)
6 from the producer of the agri-biodiesel
7 which identifies the product produced.

8 “(3) DEFINITIONS.—Any term used in this sub-
9 section which is also used in section 40A shall have
10 the meaning given such term by section 40A.

11 “(4) TERMINATION.—This subsection shall not
12 apply to any sale or use for any period after Decem-
13 ber 31, 2005.

14 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

15 “(1) IMPOSITION OF TAX.—If—

16 “(A) any credit was determined under this
17 section with respect to alcohol or biodiesel used
18 in the production of any alcohol fuel mixture or
19 qualified biodiesel mixture, respectively, and

20 “(B) any person—

21 “(i) separates such alcohol or biodiesel
22 from the mixture, or

23 “(ii) without separation, uses the mix-
24 ture other than as a fuel,

1 then there is hereby imposed on such person a
2 tax equal to the product of the applicable
3 amount and the number of gallons of such alco-
4 hol or biodiesel.

5 “(2) APPLICABLE LAWS.—All provisions of law,
6 including penalties, shall, insofar as applicable and
7 not inconsistent with this section, apply in respect of
8 any tax imposed under paragraph (1) as if such tax
9 were imposed by section 4081 and not by this sec-
10 tion.”.

11 (b) REGISTRATION REQUIREMENT.—Section 4101(a)
12 of such Code (relating to registration) is amended by in-
13 serting “and every person producing biodiesel (as defined
14 in section 40A(d)(1)) or alcohol (as defined in section
15 6426(b)(4)(A))” after “4091”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Section 40(c) of such Code is amended by
18 striking “section 4081(c), or section 4091(c)” and
19 inserting “section 4091(c), section 6426, section
20 6427(e), or section 6427(f)”.

21 (2) Section 40(d)(4)(B) of such Code is amend-
22 ed by striking “or 4081(c)”.

23 (3) Section 40(e)(1) of such Code is amended—

24 (A) by striking “2007” in subparagraph

25 (A) and inserting “2010”, and

1 (B) by striking “2008” in subparagraph
2 (B) and inserting “2011”.

3 (4) Section 40(h) of such Code is amended—

4 (A) by striking “2007” in paragraph (1)
5 and inserting “2010”, and

6 (B) by striking “, 2006, or 2007” in the
7 table contained in paragraph (2) and inserting
8 “through 2010”.

9 (5) Section 4041(b)(2)(B) of such Code is
10 amended by striking “a substance other than petro-
11 leum or natural gas” and inserting “coal (including
12 peat)”.

13 (6) Paragraph (1) of section 4041(k) of such
14 Code is amended to read as follows:

15 “(1) IN GENERAL.—Under regulations pre-
16 scribed by the Secretary, in the case of the sale or
17 use of any liquid at least 10 percent of which con-
18 sists of alcohol (as defined in section
19 6426(b)(4)(A)), the rate of the tax imposed by sub-
20 section (c)(1) shall be the comparable rate under
21 section 4091(c).”.

22 (7) Section 4081 of such Code is amended by
23 striking subsection (c).

24 (8) Paragraph (2) of section 4083(a) of such
25 Code is amended to read as follows:

1 “(2) GASOLINE.—The term ‘gasoline’—

2 “(A) includes any gasoline blend, other
3 than qualified methanol or ethanol fuel (as de-
4 fined in section 4041(b)(2)(B)) or a denaturant
5 of alcohol (as defined in section 6426(b)(4)(A)),
6 and

7 “(B) includes, to the extent prescribed in
8 regulations—

9 “(i) any gasoline blend stock, and

10 “(ii) any product commonly used as
11 an additive in gasoline.

12 For purposes of subparagraph (B)(i), the term ‘gas-
13 oline blend stock’ means any petroleum product
14 component of gasoline.”.

15 (9) Section 6427 of such Code is amended by
16 inserting after subsection (d) the following new sub-
17 section:

18 “(e) ALCOHOL OR BIODIESEL USED TO PRODUCE
19 ALCOHOL FUEL AND BIODIESEL MIXTURES OR USED AS
20 FUELS.—Except as provided in subsection (k)—

21 “(1) USED TO PRODUCE A MIXTURE.—If any
22 person produces a mixture described in section 6426
23 in such person’s trade or business, the Secretary
24 shall pay (without interest) to such person an
25 amount equal to the alcohol fuel mixture credit or

1 the biodiesel mixture credit with respect to such mix-
2 ture.

3 “(2) USED AS FUEL.—If alcohol (as defined in
4 section 40(d)(1)) or biodiesel (as defined in section
5 40A(d)(1)) or agri-biodiesel (as defined in section
6 40A(d)(2)) which is not in a mixture with a taxable
7 fuel (as defined in section 4083(a)(1))—

8 “(A) is used by any person as a fuel in a
9 trade or business, or

10 “(B) is sold by any person at retail to an-
11 other person and placed in the fuel tank of such
12 person’s vehicle,

13 the Secretary shall pay (without interest) to such
14 person an amount equal to the alcohol credit (as de-
15 termined under section 40(b)(2)) or the biodiesel
16 credit (as determined under section 40A(b)(2)) with
17 respect to such fuel.

18 “(3) COORDINATION WITH OTHER REPAYMENT
19 PROVISIONS.—No amount shall be payable for any
20 period under paragraph (1) with respect to any mix-
21 ture with respect to which an amount may be
22 claimed by such person as a credit under section
23 6426 for such period.

24 “(4) TERMINATION.—This subsection shall not
25 apply with respect to—

1 “(A) any alcohol fuel mixture (as defined
2 in section 6426(b)(3)) or alcohol (as so defined)
3 sold or used after December 31, 2010, and

4 “(B) any qualified biodiesel mixture (with-
5 in the meaning of section 6426(c)(1)) or bio-
6 diesel (as so defined) or agri-biodiesel (as so de-
7 fined) sold or used after December 31, 2005.”.

8 (10) Subsection (f) of section 6427 of such
9 Code is amended to read as follows:

10 “(f) AVIATION FUEL USED TO PRODUCE CERTAIN
11 ALCOHOL FUELS.—

12 “(1) IN GENERAL.—Except as provided in sub-
13 section (k), if any aviation fuel on which tax was im-
14 posed by section 4091 at the regular tax rate is used
15 by any person in producing a mixture described in
16 section 4091(c)(1)(A) which is sold or used in such
17 person’s trade or business, the Secretary shall pay
18 (without interest) to such person an amount equal to
19 the excess of the regular tax rate over the incentive
20 tax rate with respect to such fuel.

21 “(2) DEFINITIONS.—For purposes of paragraph
22 (1)—

23 “(A) REGULAR TAX RATE.—The term ‘reg-
24 ular tax rate’ means the aggregate rate of tax

1 imposed by section 4091 determined without re-
2 gard to subsection (c) thereof.

3 “(B) INCENTIVE TAX RATE.—The term
4 ‘incentive tax rate’ means the aggregate rate of
5 tax imposed by section 4091 with respect to
6 fuel described in subsection (c)(2) thereof.

7 “(3) COORDINATION WITH OTHER REPAYMENT
8 PROVISIONS.—No amount shall be payable under
9 paragraph (1) with respect to any aviation fuel with
10 respect to which an amount is payable under sub-
11 section (d) or (l).

12 “(4) TERMINATION.—This subsection shall not
13 apply with respect to any mixture sold or used after
14 September 30, 2007.”.

15 (11) Paragraphs (1) and (2) of section 6427(i)
16 of such Code are amended by inserting “(f),” after
17 “(d),”.

18 (12) Section 6427(i)(3) of such Code is amend-
19 ed—

20 (A) by striking “subsection (f)” both
21 places it appears in subparagraph (A) and in-
22 serting “subsection (e)(1),”

23 (B) by striking “gasoline, diesel fuel, or
24 kerosene used to produce a qualified alcohol
25 mixture (as defined in section 4081(c)(3))” in

1 subparagraph (A) and inserting “a mixture de-
2 scribed in section 6426”,

3 (C) by striking “subsection (f)(1)” in sub-
4 paragraph (B) and inserting “subsection
5 (e)(1)”,

6 (D) by striking “20 days of the date of the
7 filing of such claim” in subparagraph (B) and
8 inserting “45 days of the date of the filing of
9 such claim (20 days in the case of an electronic
10 claim)”, and

11 (E) by striking “ALCOHOL MIXTURE” in
12 the heading and inserting “ALCOHOL FUEL AND
13 BIODIESEL MIXTURE”.

14 (13) Section 6427(o) of such Code is amend-
15 ed—

16 (A) by striking paragraph (1) and insert-
17 ing the following new paragraph:

18 “(1) any tax is imposed by section 4081, and”,

19 (B) by striking “such gasohol” in para-
20 graph (2) and inserting “the alcohol fuel mix-
21 ture (as defined in section 6426(b)(3))”,

22 (C) by striking “gasohol” both places it
23 appears in the matter following paragraph (2)
24 and inserting “alcohol fuel mixture”, and

1 (D) by striking “GASOHOL” in the heading
2 and inserting “ALCOHOL FUEL MIXTURE”.

3 (14) Section 9503(b)(1) of such Code is amend-
4 ed by adding at the end the following new flush sen-
5 tence:

6 “For purposes of this paragraph, taxes received
7 under sections 4041 and 4081 shall be determined
8 without reduction for credits under section 6426.”.

9 (15) Section 9503(b)(4) of such Code is amend-
10 ed—

11 (A) by adding “or” at the end of subpara-
12 graph (C),

13 (B) by striking the comma at the end of
14 subparagraph (D)(iii) and inserting a period,
15 and

16 (C) by striking subparagraphs (E) and
17 (F).

18 (16) Section 9503(c)(2)(A)(i)(III) of such Code
19 is amended by inserting “(other than subsection (e)
20 thereof)” after “section 6427”.

21 (17) Section 9503(e)(2) of such Code is amend-
22 ed by striking subparagraph (B) and by redesignig-
23 nating subparagraphs (C), (D), and (E) as subpara-
24 graphs (B), (C), and (D), respectively.

1 (18) The table of sections for subchapter B of
2 chapter 65 of such Code is amended by inserting
3 after the item relating to section 6425 the following
4 new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

5 (d) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to fuel sold or used after December 31,
9 2003.

10 (2) REPEAL OF GENERAL FUND RETENTION OF
11 CERTAIN ALCOHOL FUELS TAXES.—The amend-
12 ments made by subsection (c)(15) shall apply to fuel
13 sold or used after September 30, 2003.

14 (e) FORMAT FOR FILING.—The Secretary of the
15 Treasury shall describe the electronic format for filing
16 claims described in section 6427(i)(3)(B) of the Internal
17 Revenue Code of 1986 (as amended by subsection
18 (b)(12)(C)) not later than October 31, 2003.

19 **SEC. 3. INCENTIVES FOR BIODIESEL.**

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 inserting after section 40 the following new section:

1 **“SEC. 40A. BIODIESEL USED AS FUEL.**

2 “(a) GENERAL RULE.—For purposes of section 38,
3 the biodiesel fuels credit determined under this section for
4 the taxable year is an amount equal to the sum of—

5 “(1) the biodiesel mixture credit, plus

6 “(2) the biodiesel credit.

7 “(b) DEFINITION OF BIODIESEL MIXTURE CREDIT
8 AND BIODIESEL CREDIT.—For purposes of this section—

9 “(1) BIODIESEL MIXTURE CREDIT.—

10 “(A) IN GENERAL.—The biodiesel mixture
11 credit of any taxpayer for any taxable year is
12 50 cents for each gallon of biodiesel used by the
13 taxpayer in the production of a qualified bio-
14 diesel mixture.

15 “(B) QUALIFIED BIODIESEL MIXTURE.—
16 The term ‘qualified biodiesel mixture’ means a
17 mixture of biodiesel and diesel fuel which—

18 “(i) is sold by the taxpayer producing
19 such mixture to any person for use as a
20 fuel,

21 “(ii) is used as a fuel by the taxpayer
22 producing such mixture, or

23 “(iii) is removed from the refinery by
24 a person producing such mixture.

25 “(C) SALE OR USE MUST BE IN TRADE OR
26 BUSINESS, ETC.—Biodiesel used in the produc-

1 tion of a qualified biodiesel mixture shall be
2 taken into account—

3 “(i) only if the sale or use described
4 in subparagraph (B) is in a trade or busi-
5 ness of the taxpayer, and

6 “(ii) for the taxable year in which
7 such sale or use occurs.

8 “(D) CASUAL OFF-FARM PRODUCTION NOT
9 ELIGIBLE.—No credit shall be allowed under
10 this section with respect to any casual off-farm
11 production of a qualified biodiesel mixture.

12 “(2) BIODIESEL CREDIT.—

13 “(A) IN GENERAL.—The biodiesel credit of
14 any taxpayer for any taxable year is 50 cents
15 for each gallon of biodiesel which is not in a
16 mixture with diesel fuel and which during the
17 taxable year—

18 “(i) is used by the taxpayer as a fuel
19 in a trade or business, or

20 “(ii) is sold by the taxpayer at retail
21 to a person and placed in the fuel tank of
22 such person’s vehicle.

23 “(B) USER CREDIT NOT TO APPLY TO BIO-
24 DIESEL SOLD AT RETAIL.—No credit shall be
25 allowed under subparagraph (A)(i) with respect

1 to any biodiesel which was sold in a retail sale
2 described in subparagraph (A)(ii).

3 “(3) CREDIT FOR AGRI-BIODIESEL.—

4 “(A) IN GENERAL.—Subject to subpara-
5 graph (B), in the case of any biodiesel which is
6 agri-biodiesel, paragraphs (1)(A) and (2)(A)
7 shall be applied by substituting ‘\$1.00’ for ‘50
8 cents’.

9 “(B) CERTIFICATION FOR AGRI-BIO-
10 DIESEL.—Subparagraph (A) shall apply only if
11 the taxpayer described in paragraph (1)(A) or
12 (2)(A) obtains a certification (in such form and
13 manner as prescribed by the Secretary) from
14 the producer of the agri-biodiesel which identi-
15 fies the product produced.

16 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
17 TAX.—The amount of the credit determined under this
18 section with respect to any agri-biodiesel shall, under regu-
19 lations prescribed by the Secretary, be properly reduced
20 to take into account any benefit provided with respect to
21 such agri-biodiesel solely by reason of the application of
22 section 6426 or 6427(e).

23 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
24 poses of this section—

1 “(1) BIODIESEL.—The term ‘biodiesel’ means
2 the monoalkyl esters of long chain fatty acids de-
3 rived from plant or animal matter which meet—

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

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

10 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
11 diesel’ means biodiesel derived solely from virgin oils.
12 Such term shall include esters derived from vege-
13 table oils from soybeans, corn, sunflower seeds, cot-
14 tonseeds, canola, crambe, rapeseeds, safflowers,
15 flaxseeds, rice bran, and mustard seeds, and from
16 animal fats.

17 “(3) MIXTURE OR BIODIESEL NOT USED AS A
18 FUEL, ETC.—

19 “(A) MIXTURES.—If—

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

24 “(ii) any person—

1 “(I) separates such biodiesel
2 from the mixture, or

3 “(II) without separation, uses the
4 mixture other than as a fuel,

5 then there is hereby imposed on such person a
6 tax equal to the product of the rate applicable
7 under subsection (b)(1)(A) and the number of
8 gallons of the mixture.

9 “(B) BIODIESEL.—If—

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

13 “(ii) any person mixes such biodiesel
14 or uses such biodiesel other than as a fuel,
15 then there is hereby imposed on such person a
16 tax equal to the product of the rate applicable
17 under subsection (b)(1)(A) and the number of
18 gallons of such biodiesel.

19 “(C) APPLICABLE LAWS.—All provisions of
20 law, including penalties, shall, insofar as appli-
21 cable and not inconsistent with this section,
22 apply in respect of any tax imposed under sub-
23 paragraph (A) as if such tax were imposed by
24 section 4081 and not by this chapter.

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

5 “(e) TERMINATION.—This section shall not apply to
6 any fuel sold after December 31, 2005.”.

7 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
8 NESS CREDIT.—Section 38(b) of such Code (relating to
9 current year business credit) is amended by striking
10 “plus” at the end of paragraph (14), by striking the period
11 at the end of paragraph (15) and inserting “, plus”, and
12 by adding at the end the following new paragraph:

13 “(16) the biodiesel fuels credit determined
14 under section 40A(a).”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 39(d) of such Code is amended by
17 adding at the end the following new paragraph:

18 “(11) NO CARRYBACK OF BIODIESEL FUELS
19 CREDIT BEFORE EFFECTIVE DATE.—No portion of
20 the unused business credit for any taxable year
21 which is attributable to the biodiesel fuels credit de-
22 termined under section 40A may be carried back to
23 a taxable year ending on or before December 31,
24 2003.”.

1 (2)(A) Section 87 is of such Code amended to
2 read as follows:

3 **“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.**

4 “Gross income includes—

5 “(1) the amount of the alcohol fuel credit deter-
6 mined with respect to the taxpayer for the taxable
7 year under section 40(a), and

8 “(2) the biodiesel fuels credit determined with
9 respect to the taxpayer for the taxable year under
10 section 40A(a).”.

11 (B) The item relating to section 87 in the table
12 of sections for part II of subchapter B of chapter 1
13 of such Code is amended by striking “fuel credit”
14 and inserting “and biodiesel fuels credits”.

15 (3) Section 196(c) of such Code is amended by
16 striking “and” at the end of paragraph (9), by strik-
17 ing the period at the end of paragraph (10) and in-
18 serting “, and”, and by adding at the end the fol-
19 lowing new paragraph:

20 “(11) the biodiesel fuels credit determined
21 under section 40A(a).”.

22 (4) The table of sections for subpart D of part
23 IV of subchapter A of chapter 1 of such Code is
24 amended by adding after the item relating to section
25 40 the following new item:

 “Sec. 40A. Biodiesel used as fuel.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to fuel sold after December 31,
3 2003, in taxable years ending after such date.

○