

109TH CONGRESS
1ST SESSION

H. R. 36

To amend the Internal Revenue Code of 1986 to provide for a small agri-biodiesel producer credit and to improve the small ethanol producer credit.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. KING of Iowa 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 provide for a small agri-biodiesel producer credit and to improve 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 AGRI-BIODIESEL PRODUCER CREDIT.**

4 (a) IN GENERAL.—Subsection (a) of section 40A of
5 the Internal Revenue Code of 1986 is amended to read
6 as follows:

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

10 “(1) the biodiesel mixture credit, plus

1 “(2) the biodiesel credit, plus

2 “(3) in the case of an eligible small agri-bio-
3 diesel producer, the small agri-biodiesel producer
4 credit.”.

5 (b) SMALL AGRI-BIODIESEL PRODUCER CREDIT DE-
6 FINED.—Subsection (b) of section 40A of such Code is
7 amended by adding at the end the following new para-
8 graph:

9 “(5) SMALL AGRI-BIODIESEL PRODUCER CRED-
10 IT.—

11 “(A) IN GENERAL.—The small agri-bio-
12 diesel producer credit of any eligible small agri-
13 biodiesel producer for any taxable year is 10
14 cents for each gallon of qualified agri-biodiesel
15 production of such producer.

16 “(B) QUALIFIED AGRI-BIODIESEL PRODUC-
17 TION.—For purposes of this paragraph, the
18 term ‘qualified agri-biodiesel production’ means
19 any agri-biodiesel which is produced by an eligi-
20 ble small agri-biodiesel producer, and which
21 during the taxable year—

22 “(i) is sold by such producer to an-
23 other person—

24 “(I) for use by such other person
25 in the production of a qualified bio-

1 diesel mixture in such other person's
 2 trade or business (other than casual
 3 off-farm production),

4 “(II) for use by such other per-
 5 son as a fuel in a trade or business,
 6 or

7 “(III) who sells such agri-bio-
 8 diesel at retail to another person and
 9 places such agri-biodiesel in the fuel
 10 tank of such other person, or

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

13 “(C) LIMITATION.— The qualified agri-
 14 biodiesel production of any producer for any
 15 taxable year shall not exceed 15,000,000 gal-
 16 lons.”.

17 (c) DEFINITIONS AND SPECIAL RULES.—Section
 18 40A of such Code is amended by redesignating subsection
 19 (e) as subsection (f) and by inserting after subsection (d)
 20 the following new subsection:

21 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL
 22 AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of
 23 this section—

24 “(1) ELIGIBLE SMALL AGRI-BIODIESEL PRO-
 25 DUCER.—The term ‘eligible small agri-biodiesel pro-

ducer' means a person who, at all times during the taxable year, has a productive capacity for agri-bio-diesel not in excess of 60,000,000 gallons.

“(2) AGGREGATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(5)(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 CORPORATIONS, 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)(5)(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.

1 “(5) REGULATIONS.—The Secretary may pre-
2 scribe such regulations as may be necessary—

3 “(A) to prevent the credit provided for in
4 subsection (a)(3) from directly or indirectly
5 benefiting any person with a direct or indirect
6 productive capacity of more than 60,000,000
7 gallons of agri-biodiesel during the taxable year,
8 or

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

13 “(6) ALLOCATION OF SMALL AGRI-BIODIESEL
14 CREDIT TO PATRONS OF COOPERATIVE.—

15 “(A) ELECTION TO ALLOCATE.—

16 “(i) IN GENERAL.— In the case of a
17 cooperative organization described in sec-
18 tion 1381(a), any portion of the credit de-
19 termined under subsection (a)(3) for the
20 taxable year may, at the election of the or-
21 ganization, be apportioned pro rata among
22 patrons of the organization on the basis of
23 the quantity or value of business done with
24 or for such patrons for the taxable year.

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

7 “(B) TREATMENT OF ORGANIZATIONS AND
8 PATRONS.—

9 “(i) ORGANIZATIONS.— The amount
10 of the credit not apportioned to patrons
11 pursuant to subparagraph (A) shall be in-
12 cluded in the amount determined under
13 subsection (a)(3) for the taxable year of
14 the organization.

15 “(ii) PATRONS.—The amount of the
16 credit apportioned to patrons pursuant to
17 subparagraph (A) shall be included in the
18 amount determined under such subsection
19 for the first taxable year of each patron
20 ending on or after the last day of the pay-
21 ment period (as defined in section
22 1382(d)) for the taxable year of the orga-
23 nization or, if earlier, for the taxable year
24 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 im-
posed by this chapter on the organization.

Such increase shall not be treated as tax
imposed by this chapter for purposes of de-
termining the amount of any credit under
this chapter or for purposes of section
55.”.

(d) SMALL AGRI-BIODIESEL CREDIT NOT A PASSIVE
ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) of
such Code, as amended by section 2, is further amended

1 by striking “section 40(a)(3)” and inserting “sections
2 40(a)(3) and 40A(a)(3)”.

3 (e) SMALL AGRI-BIODIESEL PRODUCER CREDIT NOT
4 ADDED BACK TO INCOME UNDER SECTION 87.—Section
5 87 of such Code, as amended by section 2, is further
6 amended by striking “and” at the end of paragraph (2)
7 and by striking paragraph (3) and inserting the following
8 new paragraphs:

9 “(3) the biodiesel mixture credit determined
10 with respect to the taxpayer for the taxable year
11 under section 40A(a)(1), and

12 “(4) the biodiesel credit determined with re-
13 spect to the taxpayer for the taxable year under sec-
14 tion 40A(a)(2).”.

15 (f) CONFORMING AMENDMENTS.—

16 (1) Paragraph (4) of section 40A(b) of such
17 Code is amended by striking “this section” and in-
18 serting “paragraph (1) or (2) of subsection (a)”.

19 (2) The heading of subsection (b) of section
20 40A of such Code is amended by striking “AND BIO-
21 DIESEL CREDIT” and inserting “, BIODIESEL CRED-
22 IT, AND SMALL AGRI-BIODIESEL PRODUCER CRED-
23 IT”.

24 (3) Paragraph (3) of section 40A(d) of such
25 Code is amended by redesignating subparagraph (C)

1 as subparagraph (D) and by inserting after subpara-
 2 graph (B) the following new subparagraph:

3 “(C) PRODUCER CREDIT.—If—

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

6 “(ii) any person does not use such
 7 fuel for a purpose described in subsection
 8 (b)(5)(B),

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

12 (g) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to taxable years beginning after
 14 the date of the enactment of this Act.

15 **SEC. 2. IMPROVEMENTS TO SMALL ETHANOL PRODUCER**
 16 **CREDIT AND SMALL AGRI-BIODIESEL PRO-**
 17 **DUCER CREDIT.**

18 (a) DEFINITION OF SMALL ETHANOL PRODUCER.—
 19 Section 40(g) of the Internal Revenue Code of 1986 (relat-
 20 ing to definitions and special rules for eligible small eth-
 21 anol producer credit) is amended by striking
 22 “30,000,000” each place it appears and inserting
 23 “60,000,000”.

24 (b) SMALL ETHANOL PRODUCER CREDIT NOT A PAS-
 25 SIVE ACTIVITY CREDIT.—Clause (i) of section

1 469(d)(2)(A) of such Code is amended by striking “sub-
2 part D” and inserting “subpart D, other than section
3 40(a)(3),”.

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

8 **“SEC. 87. ALCOHOL FUEL CREDIT.**

9 “Gross income includes—

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),

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

16 “(3) the biodiesel fuels credit determined with
17 respect to the taxpayer for the taxable year under
18 section 40A(a).”.

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

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