

109TH CONGRESS
1ST SESSION

S. 610

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 SENATE OF THE UNITED STATES

MARCH 11, 2005

Mr. TALENT (for himself, Mrs. LINCOLN, Mr. THUNE, Mr. JOHNSON, Mr. COLEMAN, Mr. SALAZAR, Mr. HARKIN, Mr. HAGEL, and Mr. BOND) 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 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 (relating to biodiesel
6 used as a fuel) is amended to read 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—

1 “(1) the biodiesel mixture credit, plus

2 “(2) the biodiesel credit, plus

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

6 (b) SMALL AGRI-BIODIESEL PRODUCER CREDIT DE-
7 FINED.—Section 40A(b) of the Internal Revenue Code of
8 1986 (relating to definition of biodiesel mixture credit and
9 biodiesel credit) is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(5) SMALL AGRI-BIODIESEL PRODUCER CRED-
12 IT.—

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

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

24 “(i) is sold by such producer to an-
25 other person—

1 “(I) for use by such other person
 2 in the production of a qualified bio-
 3 diesel mixture in such other person’s
 4 trade or business (other than casual
 5 off-farm production),

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

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

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

15 “(C) LIMITATION.—The qualified agri-bio-
 16 diesel production of any producer for any tax-
 17 able year shall not exceed 15,000,000 gallons.”.

18 (c) DEFINITIONS AND SPECIAL RULES.—Section
 19 40A of the Internal Revenue Code of 1986 is amended
 20 by redesignating subsection (e) as subsection (f) and by
 21 inserting after subsection (d) the following new subsection:

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

1 “(1) ELIGIBLE SMALL AGRI-BIODIESEL PRO-
 2 DUCER.—The term ‘eligible small agri-biodiesel pro-
 3 ducer’ means a person who, at all times during the
 4 taxable year, has a productive capacity for agri-bio-
 5 diesel not in excess of 60,000,000 gallons.

6 “(2) AGGREGATION RULE.—For purposes of
 7 the 15,000,000 gallon limitation under subsection
 8 (b)(5)(C) and the 60,000,000 gallon limitation
 9 under paragraph (1), all members of the same con-
 10 trolled group of corporations (within the meaning of
 11 section 267(f)) and all persons under common con-
 12 trol (within the meaning of section 52(b) but deter-
 13 mined by treating an interest of more than 50 per-
 14 cent as a controlling interest) shall be treated as 1
 15 person.

16 “(3) PARTNERSHIP, S CORPORATION, AND
 17 OTHER PASS-THRU ENTITIES.—In the case of a
 18 partnership, trust, S corporation, or other pass-thru
 19 entity, the limitations contained in subsection
 20 (b)(5)(C) and paragraph (1) shall be applied at the
 21 entity level and at the partner or similar level.

22 “(4) ALLOCATION.—For purposes of this sub-
 23 section, in the case of a facility in which more than
 24 1 person has an interest, productive capacity shall

1 be allocated among such persons in such manner as
 2 the Secretary may prescribe.

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

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

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

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

17 “(A) ELECTION TO ALLOCATE.—

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

1 the quantity or value of business done with
 2 or for such 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 “(B) TREATMENT OF ORGANIZATIONS AND
 10 PATRONS.—

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

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

(d) SMALL AGRI-BIODIESEL CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) of the Internal Revenue Code of 1986, as amended by section

1 2, is amended by striking “section 40(a)(3)” and inserting
 2 “sections 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 the Internal Revenue Code of 1986, as amended by
 6 section 2, is amended by striking “and” at the end of
 7 paragraph (2) and by striking paragraph (3) and inserting
 8 the following 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 the In-
 17 ternal Revenue Code of 1986 is amended by striking
 18 “this section” and inserting “paragraph (1) or (2)
 19 of subsection (a)”.

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

1 (3) Paragraph (3) of section 40A(d) of such
 2 Code is amended by redesignating subparagraph (C)
 3 as subparagraph (D) and by inserting after subpara-
 4 graph (B) the following new subparagraph:

5 “(C) PRODUCER CREDIT.—If—

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

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

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

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

17 **SEC. 2. IMPROVEMENTS TO SMALL ETHANOL PRODUCER**
 18 **CREDIT.**

19 (a) DEFINITION OF SMALL ETHANOL PRODUCER.—
 20 Section 40(g) of the Internal Revenue Code of 1986 (relat-
 21 ing to definitions and special rules for eligible small eth-
 22 anol producer credit) is amended by striking
 23 “30,000,000” each place it appears and inserting
 24 “60,000,000”.

1 (b) SMALL ETHANOL PRODUCER CREDIT NOT A
 2 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
 3 469(d)(2)(A) of the Internal Revenue Code of 1986 is
 4 amended by striking “subpart D” and inserting “subpart
 5 D, other than section 40(a)(3),”.

6 (c) SMALL ETHANOL PRODUCER CREDIT NOT
 7 ADDED BACK TO INCOME UNDER SECTION 87.—Section
 8 87 of the Internal Revenue Code of 1986 (relating to in-
 9 come inclusion of alcohol and biodiesel fuels credits) is
 10 amended by redesignating paragraph (2) as paragraph (3)
 11 and by striking paragraph (1) and inserting the following:

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

15 “(2) the alcohol credit determined with respect
 16 to the taxpayer for the taxable year under section
 17 40(a)(2), and”.

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

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