

111TH CONGRESS  
2D SESSION

# H. R. 5142

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for biofuel facilities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2010

Ms. SCHWARTZ (for herself, Mr. SCHAUER, and Mr. BILBRAY) 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 for an investment tax credit for biofuel facilities, and for other purposes.

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 “Grow a Renewable En-  
5       ergy Economy Now—Jumpstart Other Biofuels Act of  
6       2010”.

1 **SEC. 2. ALLOWANCE OF INVESTMENT TAX CREDIT FOR**  
 2 **CERTAIN CELLULOSIC AND ALGAE-BASED**  
 3 **BIOFUEL FACILITIES.**

4 (a) IN GENERAL.—Subsection (a) of section 48 of the  
 5 Internal Revenue Code of 1986 is amended by adding at  
 6 the end the following new paragraph:

7 “(6) ELECTION TO TREAT QUALIFIED CELLU-  
 8 LOSIC AND ALGAE-BASED BIOFUEL FACILITY AS EN-  
 9 ERGY PROPERTY.—

10 “(A) IN GENERAL.—In the case of any  
 11 qualified property which is part of a qualified  
 12 cellulosic and algae-based biofuel facility—

13 “(i) such property shall be treated as  
 14 energy property for purposes of this sec-  
 15 tion, and

16 “(ii) the energy percentage with re-  
 17 spect to such property shall be 30 percent.

18 “(B) DENIAL OF PRODUCTION CREDIT.—  
 19 No credit shall be allowed under section 40 for  
 20 any taxable year with respect to any qualified  
 21 investment credit cellulosic and algae-based  
 22 biofuel facility.

23 “(C) QUALIFIED INVESTMENT CREDIT  
 24 CELLULOSIC AND ALGAE-BASED BIOFUEL FA-  
 25 CILITY.—For purposes of this paragraph, the  
 26 term ‘qualified cellulosic and algae-based biofuel

1 facility’ means a facility constructed with the  
2 primary purpose of the production of transpor-  
3 tation-grade qualified cellulosic biofuel produc-  
4 tion (as defined in subparagraph (C) of section  
5 40(b)(6)) or qualified algae-based biofuel pro-  
6 duction (as defined in section (F) of such sec-  
7 tion) if no credit has been allowed under section  
8 40 with respect to such facility and the tax-  
9 payer makes an irrevocable election to have this  
10 paragraph apply to such facility.

11 “(D) TERMINATION.—No election may be  
12 made under subparagraph (C) after December  
13 31, 2016.”.

14 (b) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL  
15 PLANT PROPERTY.—

16 (1) EXTENSION OF.—Paragraphs (2)(D) and  
17 (5)(B) of section 168(l) of such Code are each  
18 amended by striking “January 1, 2013” and insert-  
19 ing “January 1, 2017”.

20 (2) COORDINATION WITH CREDIT.—Section  
21 168(l)(8) of such Code is amended by inserting “or  
22 under section 48(a)(6)(C) (relating to election to  
23 treat qualified cellulosic and algae-based biofuel fa-  
24 cility as energy property)” before the period at the  
25 end.

1 (c) CONFORMING AMENDMENT.—Section 48(a)(3) of  
 2 such Code is amended by striking “section 45” and insert-  
 3 ing “section 40 or 45”.

4 (d) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to property placed in service after  
 6 the date of the enactment of this Act.

7 **SEC. 3. INCLUSION OF ALGAE-BASED BIOFUEL IN DEFINI-**  
 8 **TION OF CELLULOSIC BIOFUEL.**

9 (a) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

10 (1) GENERAL RULE.—Paragraph (4) of section  
 11 40(a) of the Internal Revenue Code of 1986 is  
 12 amended by inserting “and algae-based” after “cel-  
 13 lulosic”.

14 (2) DEFINITIONS.—Paragraph (6) of section  
 15 40(b) of such Code is amended—

16 (A) by inserting “AND ALGAE-BASED”  
 17 after “CELLULOSIC” in the heading,

18 (B) by striking subparagraph (A) and in-  
 19 serting the following:

20 “(A) IN GENERAL.—The cellulosic and  
 21 algae-based biofuel producer credit of any tax-  
 22 payer is an amount equal to the applicable  
 23 amount for each gallon of—

24 “(i) qualified cellulosic biofuel produc-  
 25 tion, and

1 “(ii) qualified algae-based biofuel pro-  
2 duction.”,

3 (C) by redesignating subparagraphs (F),  
4 (G), and (H) as subparagraphs (I), (J), and  
5 (K), respectively,

6 (D) by inserting “AND ALGAE-BASED”  
7 after “CELLULOSIC” in the heading of subpara-  
8 graph (I), as so redesignated,

9 (E) by inserting “or algae-based biofuel,  
10 whichever is appropriate,” after “cellulosic  
11 biofuel” in subparagraph (J), as so redesign-  
12 nated,

13 (F) by inserting “and qualified algae-based  
14 biofuel production” after “qualified cellulosic  
15 biofuel production” in subparagraph (K), as so  
16 redesignated, and

17 (G) by inserting after subparagraph (E)  
18 the following new subparagraphs:

19 “(F) QUALIFIED ALGAE-BASED BIOFUEL  
20 PRODUCTION.—For purposes of this section,  
21 the term ‘qualified algae-based biofuel produc-  
22 tion’ means any algae-based biofuel which is  
23 produced by the taxpayer, and which during the  
24 taxable year—

1 “(i) is sold by the taxpayer to another  
2 person—

3 “(I) for use by such other person  
4 in the production of a qualified algae-  
5 based biofuel mixture in such other  
6 person’s trade or business (other than  
7 casual off-farm production),

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

11 “(III) who sells such algae-based  
12 biofuel at retail to another person and  
13 places such algae-based biofuel in the  
14 fuel tank of such other person, or

15 “(ii) is used or sold by the taxpayer  
16 for any purpose described in clause (i).

17 The qualified algae-based biofuel production of  
18 any taxpayer for any taxable year shall not in-  
19 clude any alcohol which is purchased by the  
20 taxpayer and with respect to which such pro-  
21 ducer increases the proof of the alcohol by addi-  
22 tional distillation.

23 “(G) QUALIFIED ALGAE-BASED BIOFUEL  
24 MIXTURE.—For purposes of this paragraph, the  
25 term ‘qualified algae-based biofuel mixture’

1 means a mixture of algae-based biofuel and gas-  
2 oline or of algae-based biofuel and a special fuel  
3 which—

4 “(i) is sold by the person producing  
5 such mixture to any person for use as a  
6 fuel, or

7 “(ii) is used as a fuel by the person  
8 producing such mixture.

9 “(H) ALGAE-BASED BIOFUEL.—For pur-  
10 poses of this paragraph—

11 “(i) IN GENERAL.—The term ‘algae-  
12 based biofuel’ means any liquid fuel, in-  
13 cluding gasoline, diesel, aviation fuel, and  
14 ethanol, which—

15 “(I) is produced from the bio-  
16 mass of algal organisms, and

17 “(II) meets the registration re-  
18 quirements for fuels and fuel additives  
19 established by the Environmental Pro-  
20 tection Agency under section 211 of  
21 the Clean Air Act (42 U.S.C. 7545).

22 “(ii) ALGAL ORGANISM.—The term  
23 ‘algal organism’ means a single- or multi-  
24 cellular organism which is primarily aquat-  
25 ic and classified as a non-vascular plant,

including microalgae, blue-green algae (cyanobacteria), and macroalgae (seaweeds).

“(iii) EXCLUSION OF LOW-PROOF ALCOHOL.—Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.”.

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (D) of section 40(d)(3) of such Code is amended—

(i) by inserting “AND ALGAE-BASED” after “CELLULOSIC” in the heading,

(ii) by inserting “or (b)(6)(F)” after “(b)(6)(C)” in clause (ii), and

(iii) by inserting “or algae-based” after “such cellulosic”.

(B) Paragraph (6) of section 40(d) of such Code is amended—

(i) by inserting “AND ALGAE-BASED” after “CELLULOSIC” in the heading, and

(ii) by striking the first sentence and inserting “No cellulosic and algae-based biofuel producer credit shall be determined



1 under subsection (a) with respect to any  
2 cellulosic or algae-based biofuel unless such  
3 cellulosic or algae-based biofuel is produced  
4 in the United States and used as a fuel in  
5 the United States.”.

6 (C) Paragraph (3) of section 40(e) of such  
7 Code is amended by inserting “AND ALGAE-  
8 BASED” after “CELLULOSIC” in the heading.

9 (D) Paragraph (1) of section 4101(a) of  
10 such Code is amended—

11 (i) by inserting “or algae-based” after  
12 “cellulosic”, and

13 (ii) by inserting “and 40(b)(6)(H), re-  
14 spectively” after “section 40(b)(6)(E)”.

15 (b) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL  
16 PLANT PROPERTY.—Subsection (l) of section 168 of such  
17 Code is amended—

18 (1) by inserting “AND ALGAE-BASED” after  
19 “CELLULOSIC” in the heading,

20 (2) by inserting “and any qualified algae-based  
21 biofuel plant property” after “qualified cellulosic  
22 biofuel plant property” in paragraph (1),

23 (3) by redesignating paragraphs (4) through  
24 (8) as paragraphs (6) through (10), respectively,

1           (4) by inserting “or qualified algae-based  
2       biofuel plant property” after “cellulosic biofuel plant  
3       property” in paragraph (7)(C), as so redesignated,

4           (5) by striking “with respect to” and all that  
5       follows in paragraph (9), as so redesignated, and in-  
6       serting “with respect to any qualified cellulosic  
7       biofuel plant property and any qualified algae-based  
8       biofuel plant property which ceases to be such quali-  
9       fied property.”,

10          (6) by inserting “or qualified algae-based  
11       biofuel plant property” after “cellulosic biofuel plant  
12       property” in paragraph (10), as so redesignated, and

13          (7) by inserting after paragraph (3) the fol-  
14       lowing new paragraphs:

15               “(4) QUALIFIED ALGAE-BASED BIOFUEL PLANT  
16       PROPERTY.—The term ‘qualified algae-based biofuel  
17       plant property’ means property of a character sub-  
18       ject to the allowance for depreciation—

19                       “(A) which is used in the United States  
20       solely to produce algae-based biofuel,

21                       “(B) the original use of which commences  
22       with the taxpayer after the date of the enact-  
23       ment of this paragraph,

24                       “(C) which is acquired by the taxpayer by  
25       purchase (as defined in section 179(d)) after

1 the date of the enactment of this paragraph,  
2 but only if no written binding contract for the  
3 acquisition was in effect on or before such date,  
4 and

5 “(D) which is placed in service by the tax-  
6 payer before January 1, 2017.

7 “(5) ALGAE-BASED BIOFUEL.—

8 “(A) IN GENERAL.—The term ‘algae-based  
9 biofuel’ means any liquid fuel which is produced  
10 from the biomass of algal organisms.

11 “(B) ALGAL ORGANISM.—The term ‘algal  
12 organism’ means a single- or multi-cellular or-  
13 ganism which is primarily aquatic and classified  
14 as a non-vascular plant, including microalgae,  
15 blue-green algae (cyanobacteria), and  
16 macroalgae (seaweeds).”.

17 (c) EFFECTIVE DATES.—

18 (1) CELLULOSIC BIOFUEL PRODUCER CRED-  
19 IT.—The amendments made by subsection (a) shall  
20 apply to fuel produced after the date of the enact-  
21 ment of this Act.

22 (2) SPECIAL ALLOWANCE FOR CELLULOSIC  
23 BIOFUEL PLANT PROPERTY.—The amendments  
24 made by subsection (b) shall apply to property pur-

1        chased and placed in service after the date of the en-  
2        actment of this Act.

3    **SEC. 4. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC**  
4                    **AND ALGAE-BASED BIOFUEL PRODUCER**  
5                    **CREDIT.**

6        (a) IN GENERAL.—Paragraph (6) of section 40(b) of  
7        the Internal Revenue Code of 1986 is amended by redesignig-  
8        nating subparagraphs (I), (J), and (K), as designated by  
9        section 3(a)(2)(C) of this Act, as subparagraphs (J), (K),  
10       and (L), respectively, and by inserting after subparagraph  
11       (H) the following new subparagraph:

12                    “(I) EXCLUSION OF CERTAIN PROCESSED  
13                    FUELS WITH A HIGH ACID CONTENT.—The  
14                    terms ‘cellulosic biofuel’ and ‘algae-based  
15                    biofuel’ shall not include any processed fuel  
16                    with an acid number greater than 25. For pur-  
17                    poses of the preceding sentence, the term ‘proc-  
18                    essed fuel’ means any fuel other than a fuel—

19                    “(i) more than 4 percent of which (de-  
20                    termined by weight) is any combination of  
21                    water and sediment, or

22                    “(ii) the ash content of which is more  
23                    than 1 percent (determined by weight).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to fuels sold or used on or after  
 3 the date of the enactment of this Act.

4 **SEC. 5. EXTENSION OF CELLULOSIC AND ALGAE-BASED**  
 5 **BIOFUEL PRODUCER CREDIT.**

6 Subparagraph (L) of section 40(b)(6) of the Internal  
 7 Revenue Code of 1986, as amended by sections 3 and 4  
 8 of this Act, is amended by striking “January 1, 2013”  
 9 and inserting “January 1, 2017”.

10 **SEC. 6. ELECTIVE PAYMENT FOR CELLULOSIC AND ALGAE-**  
 11 **BASED BIOFUEL FACILITY PROPERTY.**

12 (a) IN GENERAL.—Chapter 65 of the Internal Rev-  
 13 enue Code of 1986 (relating to abatements, credits, and  
 14 refunds) is amended by adding at the end the following  
 15 new subchapter:

16 **“Subchapter C—Direct Payment Provisions**

“Sec. 6451. Elective payment for cellulosic and algae-based biofuel facility property.

17 **“SEC. 6451. ELECTIVE PAYMENT FOR CELLULOSIC AND**  
 18 **ALGAE-BASED BIOFUEL FACILITY PROPERTY.**

19 “(a) IN GENERAL.—Any person making an election  
 20 under this section with respect to any specified cellulosic  
 21 and algae-based biofuel facility property originally placed  
 22 in service by such person during the taxable year shall  
 23 be treated as making a payment, against the tax imposed  
 24 by subtitle A for the taxable year equal to 30 percent of

1 the basis of such property. Such payment shall be treated  
 2 as made on the later of the due date of the return of such  
 3 tax or the date on which such return is filed.

4 “(b) SPECIFIED CELLULOSIC AND ALGAE-BASED  
 5 BIOFUEL FACILITY PROPERTY.—For purposes of this sec-  
 6 tion, the term ‘specified cellulosic and algae-based biofuel  
 7 facility property’ means a qualified cellulosic and algae-  
 8 based biofuel facility (as defined by section 48(a)(6)(C))  
 9 which—

10 “(1) is property of a character subject to an al-  
 11 lowance for depreciation, and

12 “(2) is originally placed in service before Janu-  
 13 ary 1, 2017.

14 “(c) SPECIAL RULES FOR CERTAIN NON-TAX-  
 15 PAYERS.—

16 “(1) DENIAL OF PAYMENT.—Subsection (a)  
 17 shall not apply with respect to any property origi-  
 18 nally placed in service by—

19 “(A) any governmental entity,

20 “(B) any organization described in section  
 21 501(c) or 401(a) and exempt from tax under  
 22 section 501(a), or

23 “(C) any entity referred to in paragraph  
 24 (4) of section 54(j), or

1           “(D) any partnership or other pass-thru  
2           entity any partner (or other holder of an equity  
3           or profits interest) of which is described in  
4           paragraph (1), (2), or (3).

5           “(2) EXCEPTION FOR PROPERTY USED IN UN-  
6           RELATED TRADE OR BUSINESS.—Paragraph (1)  
7           shall not apply with respect to any property origi-  
8           nally placed in service by an entity described in sec-  
9           tion 511(a)(2) if substantially all of the income de-  
10          rived from such property by such entity is unrelated  
11          business taxable income (as defined in section 512).

12          “(3) SPECIAL RULES FOR PARTNERSHIPS AND  
13          S CORPORATIONS.—In the case of property originally  
14          placed in service by a partnership or an S corpora-  
15          tion—

16               “(A) the election under subsection (a) may  
17               be made only by such partnership or S corpora-  
18               tion,

19               “(B) such partnership or S corporation  
20               shall be treated as making the payment referred  
21               to in subsection (a) only to the extent of the  
22               proportionate share of such partnership or S  
23               corporation as is owned by persons who would  
24               be treated as making such payment if the prop-

1           erty were originally placed in service by such  
2           persons, and

3                   “(C) the return required to be made by  
4           such partnership or S corporation under section  
5           6031 or 6037 (as the case may be) shall be  
6           treated as a return of tax for purposes of sub-  
7           section (a).

8           For purposes of subparagraph (B), rules similar to  
9           the rules of section 168(h)(6) (other than subpara-  
10          graph (F) thereof) shall apply.

11          “(d) COORDINATION WITH PRODUCTION AND IN-  
12          VESTMENT CREDITS.—In the case of any property with  
13          respect to which an election is made under this section—

14                   “(1) DENIAL OF PRODUCTION AND INVEST-  
15          MENT CREDITS.—No credit shall be determined  
16          under section 40 or 48 with respect to such property  
17          for the taxable year in which such property is origi-  
18          nally placed in service or any subsequent taxable  
19          year.

20                   “(2) REDUCTION OF PAYMENT BY PROGRESS  
21          EXPENDITURES ALREADY TAKEN INTO ACCOUNT.—  
22          The amount of the payment treated as made under  
23          subsection (a) with respect to such property shall be  
24          reduced by the aggregate amount of credits deter-  
25          mined under section 48 with respect to such prop-



erty for all taxable years preceding the taxable year  
in which such property is originally placed in service.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—

For purposes of this section—

“(1) OTHER DEFINITIONS.—Terms used in this  
section which are also used in section 48 shall have  
the same meaning for purposes of this section as  
when used in such section.

“(2) APPLICATION OF RECAPTURE RULES,  
ETC.—Except as otherwise provided by the Sec-  
retary—

“(A) IN GENERAL.—Except as otherwise  
provided in this paragraph, rules similar to the  
rules of section 50 shall apply.

“(B) EXCEPTION TO LIMITATION ON REAL  
ESTATE INVESTMENT TRUSTS, ETC.—Para-  
graph (1) of section 50(d) shall not apply.

“(3) PROVISION OF INFORMATION.—A person  
shall not be treated as having elected the application  
of this section unless the taxpayer provides such in-  
formation as the Secretary (in consultation with the  
Secretary of Energy) may require for purposes of  
verifying the proper amount to be treated as a pay-  
ment under subsection (a) and evaluating the effec-  
tiveness of this section.

1           “(4) EXCLUSION FROM GROSS INCOME.—Any  
2           credit or refund allowed or made by reason of this  
3           section shall not be includible in gross income or al-  
4           ternative minimum taxable income.”.

5           (b) CONFORMING AMENDMENTS.—

6           (1) Subparagraph (A) of section 6211(b)(4)(A)  
7           of such Code is amended by inserting “and sub-  
8           chapter C of chapter 65 (including any payment  
9           treated as made under such subchapter)” after  
10          “6431”.

11          (2) Subparagraph (B) of section 6425(c)(1) of  
12          such Code is amended—

13                (A) by striking “the credits” and inserting  
14                “the sum of—

15                       “(i) the credits”,

16                (B) by striking the period at the end of  
17                clause (i) thereof (as amended by this para-  
18                graph) and inserting “, plus”, and

19                (C) by adding at the end the following new  
20                clause:

21                       “(ii) the payments treated as made  
22                       under subchapter C of chapter 65.”.

23          (3) Paragraph (4) of section 6654(f) of such  
24          Code is amended—

1 (A) by striking “the credits” and inserting  
2 “the sum of—

3 “(A) the credits”,

4 (B) by striking the period at the end of  
5 subparagraph (A) thereof (as amended by this  
6 paragraph) and inserting “, and”, and

7 (C) by adding at the end the following new  
8 subparagraph:

9 “(B) the payments treated as made under  
10 subchapter C of chapter 65.”.

11 (4) Subparagraph (B) of section 6655(g)(1) of  
12 such Code is amended—

13 (A) by striking “the credits” and inserting  
14 “the sum of—

15 “(i) the credits”,

16 (B) by striking the period at the end of  
17 clause (i) thereof (as amended by this para-  
18 graph) and inserting “, plus”, and

19 (C) by adding at the end the following new  
20 clause:

21 “(ii) the payments treated as made  
22 under subchapter C of chapter 65.”.

23 (5) Paragraph (2) of section 1324(b) of title  
24 31, United States Code, is amended by inserting “,

1 or from the provisions of subchapter C of chapter 65  
2 of such Code” before the period at the end.

3 (6) The table of subchapters for chapter 65 of  
4 the Internal Revenue Code of 1986 is amended by  
5 adding at the end the following new item:

“SUBCHAPTER C. DIRECT PAYMENT PROVISIONS.”.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to property originally placed in  
8 service after the date of the enactment of this Act.

○