

114TH CONGRESS
1ST SESSION

S. 2353

To amend the Internal Revenue Code of 1986 to extend and modify the
incentives for biodiesel.

IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2015

Mr. GRASSLEY (for himself and Ms. CANTWELL) 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 extend
and modify the incentives for biodiesel.

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 “Biodiesel Tax Incentive
5 Reform and Extension Act of 2015”.

6 **SEC. 2. EXTENSION AND REFORM OF BIODIESEL TAX IN-**
7 **CENTIVES.**

8 (a) **EXTENSION OF CURRENT LAW INCENTIVES.**—

(1) INCOME TAX CREDIT.—Subsection (g) of section 40A is amended by striking “December 31, 2014” and inserting “March 31, 2016”.

(2) EXCISE TAX INCENTIVES.—

(A) IN GENERAL.—Paragraph (6) of section 6426(c) is amended by striking “December 31, 2014” and inserting “March 31, 2016”.

(B) PAYMENTS.—Subparagraph (B) of section 6427(e)(6) is amended by striking “December 31, 2014” and inserting “March 31, 2016”.

(C) SPECIAL RULE FOR CERTAIN PERIODS DURING 2015.—Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under section 6426(c) of the Internal Revenue Code of 1986 for periods after December 31, 2014, and on or before the last day of the first calendar quarter ending after the date of the enactment of this Act, such credit shall be allowed, and any refund or payment attributable to such credit (including any payment under section 6427(e) of such Code) shall be made, only in such manner as the Secretary of the Treasury (or the Secretary’s delegate) shall provide. Such Secretary

1 shall issue guidance within 30 days after the
2 date of the enactment of this Act providing for
3 a one-time submission of claims covering peri-
4 ods described in the preceding sentence. Such
5 guidance shall provide for a 180-day period for
6 the submission of such claims (in such manner
7 as prescribed by such Secretary) to begin not
8 later than 30 days after such guidance is
9 issued. Such claims shall be paid by such Sec-
10 retary not later than 60 days after receipt. If
11 such Secretary has not paid pursuant to a claim
12 filed under this subsection within 60 days after
13 the date of the filing of such claim, the claim
14 shall be paid with interest from such date de-
15 termined by using the overpayment rate and
16 method under section 6621 of such Code.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall apply to fuel sold or used
19 after December 31, 2014.

20 (b) REFORM OF CREDIT.—

21 (1) INCOME TAX CREDIT.—

22 (A) IN GENERAL.—So much of section
23 40A as precedes subsection (c) is amended to
24 read as follows:

1 **“SEC. 40A. BIODIESEL FUELS CREDIT.**

2 “(a) IN GENERAL.—For purposes of section 38, the
3 biodiesel fuels credit determined under this section for the
4 taxable year is \$1.00 for each gallon of biodiesel produced
5 by the taxpayer which during the taxable year—

6 “(1) is sold by the taxpayer to another per-
7 son—

8 “(A) for use by such other person’s trade
9 or business as a fuel or in the production of a
10 qualified biodiesel mixture (other than casual
11 off-farm production), or

12 “(B) who sells such biodiesel at retail to
13 another person and places such biodiesel in the
14 fuel tank of such other person, or

15 “(2) is used by such taxpayer for any purpose
16 described in paragraph (1).

17 “(b) INCREASED CREDIT FOR SMALL PRODUCERS.—

18 “(1) IN GENERAL.—In the case of any eligible
19 small biodiesel producer, subsection (a) shall be ap-
20 plied by increasing the dollar amount contained
21 therein by 10 cents.

22 “(2) LIMITATION.—Paragraph (1) shall only
23 apply with respect to the first 15,000,000 gallons of
24 biodiesel produced by any eligible small biodiesel
25 producer during any taxable year.”.

1 (B) DEFINITIONS AND SPECIAL RULES.—

2 Section 40A(d) is amended by striking all that
3 follows paragraph (1) and inserting the fol-
4 lowing:

5 “(2) QUALIFIED BIODIESEL MIXTURE; BIO-
6 DIESEL MIXTURE.—

7 “(A) QUALIFIED BIODIESEL MIXTURE.—

8 “(i) IN GENERAL.—The term ‘quali-
9 fied biodiesel mixture’ means a biodiesel
10 mixture which is—

11 “(I) sold by the producer of such
12 mixture to any person for use as a
13 fuel, or

14 “(II) used by the producer of
15 such mixture as a fuel.

16 “(ii) SALE OR USE MUST BE IN
17 TRADE OR BUSINESS, ETC.—A biodiesel
18 mixture shall not be treated as a qualified
19 biodiesel mixture unless the sale or use de-
20 scribed in clause (i) is in a trade or busi-
21 ness of the person producing the biodiesel
22 mixture.

23 “(B) BIODIESEL MIXTURE.—The term
24 ‘biodiesel mixture’ means a mixture which con-
25 sists of biodiesel and diesel fuel (as defined in

1 section 4083(a)(3)), determined without regard
 2 to any use of kerosene.

3 “(3) BIODIESEL NOT USED FOR A QUALIFIED
 4 PURPOSE.—If—

5 “(A) any credit was determined with re-
 6 spect to any biodiesel under this section, and

7 “(B) any person uses such biodiesel for a
 8 purpose not described in subsection (a),
 9 then there is hereby imposed on such person a tax
 10 equal to the product of the rate applicable under
 11 subsection (a) and the number of gallons of such
 12 biodiesel.

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

17 “(5) LIMITATION TO BIODIESEL WITH CONNEC-
 18 TION TO THE UNITED STATES.—

19 “(A) IN GENERAL.—No credit shall be de-
 20 termined under subsection (a) with respect to
 21 biodiesel unless such biodiesel is produced in
 22 the United States from qualified feedstocks.
 23 For purposes of this paragraph, the term
 24 ‘United States’ includes any possession of the
 25 United States.

“(B) QUALIFIED FEEDSTOCKS.—For purposes of subparagraph (A), the term ‘qualified feedstock’ means any feedstock which is allowable for a fuel that is assigned a D-Code of 4 under table 1 of section 80.1426(f) of title 40, Code of Federal Regulations.”.

(C) RULES FOR SMALL BIODIESEL PRODUCERS.—

(i) IN GENERAL.—Section 40A(e) is amended—

(I) by striking “agri-biodiesel” each place it appears in paragraphs (1) and (5)(A) and inserting “biodiesel”,

(II) by striking “subsection (b)(4)(C)” each place it appears in paragraphs (2) and (3) and inserting “subsection (b)(2)”, and

(III) by striking “subsection (a)(3)” each place it appears in paragraphs (5)(A), (6)(A)(i), and (6)(B)(i) and inserting “subsection (b)”.

(ii) The heading for subsection (e) of section 40A is amended by striking “AGRI-BIODIESEL” and inserting “BIODIESEL”.

1 (iii) The headings for paragraphs (1)
 2 and (6) of section 40A(e) are each amend-
 3 ed by striking “AGRI-BIODIESEL” and in-
 4 serting “BIODIESEL”.

5 (D) RENEWABLE DIESEL.—

6 (i) IN GENERAL.—Paragraph (3) of
 7 section 40A(f) is amended to read as fol-
 8 lows:

9 “(3) RENEWABLE DIESEL DEFINED.—

10 “(A) IN GENERAL.—The term ‘renewable
 11 diesel’ means liquid fuel derived from biomass
 12 which—

13 “(i) is not a mono-alkyl ester,

14 “(ii) can be used in engines designed
 15 to operate on conventional diesel fuel, and

16 “(iii) meets the requirements for any
 17 Grade No. 1–D fuel or Grade No. 2–D fuel
 18 covered under the American Society for
 19 Testing and Materials specification D–
 20 975–13a.

21 “(B) EXCEPTIONS.—Such term shall not
 22 include—

23 “(i) any liquid with respect to which
 24 a credit may be determined under section
 25 40,

“(ii) any fuel derived from coprocessing biomass with a feedstock which is not biomass, or

“(iii) any fuel that is not chemically equivalent to petroleum diesel fuels that can meet fuel quality specifications applicable to diesel fuel, gasoline, or aviation fuel.

“(C) BIOMASS.—For purposes of this paragraph, the term ‘biomass’ has the meaning given such term by section 45K(c)(3).”.

(ii) CONFORMING AMENDMENTS.—

Section 40A(f) is amended—

(I) by striking “Subsection (b)(4)” in paragraph (2) and inserting “Subsection (b)”, and

(II) by striking paragraph (4) and inserting the following:

“(4) CERTAIN AVIATION FUEL.—Except as provided paragraph (3)(B), the term ‘renewable diesel’ shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.”.

1 (E) TERMINATION.—Subsection (g) of sec-
 2 tion 40A, as amended by subsection (a)(1), is
 3 amended by striking “March 31, 2016” and in-
 4 serting “December 31, 2018”.

5 (F) CLERICAL AMENDMENT.—The table of
 6 sections for subpart D of part IV of subchapter
 7 A of chapter 1 is amended by striking the item
 8 relating to section 40A and inserting the fol-
 9 lowing new item:

“Sec. 40A. Biodiesel fuels credit.”.

10 (2) REFORM OF EXCISE TAX CREDIT.—

11 (A) IN GENERAL.—Subsection (c) of sec-
 12 tion 6426, as amended by subsection (a)(2)(A),
 13 is amended to read as follows:

14 “(c) BIODIESEL PRODUCTION CREDIT.—

15 “(1) IN GENERAL.—For purposes of this sec-
 16 tion, the biodiesel production credit is \$1.00 for each
 17 gallon of biodiesel produced by the taxpayer and
 18 which—

19 “(A) is sold by such taxpayer to another
 20 person—

21 “(i) for use by such other person’s
 22 trade or business as a fuel or in the pro-
 23 duction of a qualified biodiesel mixture
 24 (other than casual off-farm production), or

1 “(ii) who sells such biodiesel at retail
 2 to another person and places such biodiesel
 3 in the fuel tank of such other person, or

4 “(B) is used by such taxpayer for any pur-
 5 pose described in subparagraph (A).

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

9 “(3) TERMINATION.—This subsection shall not
 10 apply to any sale, use, or removal after December
 11 31, 2018.”.

12 (B) PRODUCER REGISTRATION REQUIRE-
 13 MENT.—Subsection (a) of section 6426 is
 14 amended by striking “subsections (d) and (e)”
 15 in the flush sentence at the end and inserting
 16 “subsections (c), (d), and (e)”.

17 (C) RECAPTURE.—

18 (i) IN GENERAL.—Subsection (f) of
 19 section 6426 is amended—

20 (I) by striking “or biodiesel”
 21 each place it appears in subpara-
 22 graphs (A) and (B)(i) of paragraph
 23 (1),

24 (II) by striking “or biodiesel mix-
 25 ture” in paragraph (1)(A), and

1 (III) by redesignating paragraph
 2 (2) as paragraph (3) and by inserting
 3 after paragraph (1) the following new
 4 paragraph:

5 “(2) BIODIESEL.—If any credit was determined
 6 under this section or paid pursuant to section
 7 6427(e) with respect to the production of any bio-
 8 diesel and any person uses such biodiesel for a pur-
 9 pose not described in subsection (c)(1), then there is
 10 hereby imposed on such person a tax equal to \$1 for
 11 each gallon of such biodiesel.”.

12 (ii) CONFORMING AMENDMENTS.—

13 (I) Paragraph (3) of section
 14 6426(f), as redesignated by clause
 15 (i)(III), is amended by inserting “or
 16 (2)” after “paragraph (1)”.

17 (II) The heading for paragraph
 18 (1) of section 6426(f) is amended by
 19 striking “IMPOSITION OF TAX” and
 20 inserting “IN GENERAL”.

21 (D) LIMITATION.—Section 6426(i) is
 22 amended—

23 (i) in paragraph (2)—

24 (I) by striking “biodiesel or”, and

1 (II) by striking “BIODIESEL
2 AND” in the heading, and

3 (ii) by inserting after paragraph (2)
4 the following new paragraph:

5 “(3) BIODIESEL.—No credit shall be deter-
6 mined under subsection (a) with respect to biodiesel
7 unless such biodiesel is produced in the United
8 States from qualified feedstocks (as defined in sec-
9 tion 40A(d)(5)(B)).”.

10 (E) CLERICAL AMENDMENTS.—

11 (i) The heading of section 6426 is
12 amended by striking “**ALCOHOL FUEL,**
13 **BIODIESEL, AND ALTERNATIVE FUEL**
14 **MIXTURES**” and inserting “**ALCOHOL**
15 **FUEL MIXTURES, BIODIESEL PRODUC-**
16 **TION, AND ALTERNATIVE FUEL MIX-**
17 **TURES**”.

18 (ii) The item relating to section 6426
19 in the table of sections for subchapter B of
20 chapter 65 is amended by striking “alcohol
21 fuel, biodiesel, and alternative fuel mix-
22 tures” and inserting “alcohol fuel mix-
23 tures, biodiesel production, and alternative
24 fuel mixtures”.

1 (3) REFORM OF EXCISE PAYMENTS OF CRED-
 2 IT.—Subsection (e) of section 6427 is amended—

3 (A) by striking “or the biodiesel mixture
 4 credit” in paragraph (1),

5 (B) by redesignating paragraphs (3)
 6 through (6) as paragraphs (4) through (7), re-
 7 spectively, and by inserting after paragraph (2)
 8 the following new paragraph:

9 “(3) BIODIESEL PRODUCTION CREDIT.—If any
 10 person produces biodiesel and sells or uses such bio-
 11 diesel as provided in section 6426(c)(1), the Sec-
 12 retary shall pay (without interest) to such person an
 13 amount equal to the biodiesel production credit with
 14 respect to such biodiesel.”,

15 (C) by striking “paragraph (1) or (2)”
 16 each place it appears in paragraphs (4) and (6),
 17 as redesignated by subparagraph (B), and in-
 18 serting “paragraph (1), (2), or (3)”,

19 (D) by striking “alternative fuel” each
 20 place it appears in paragraphs (4) and (6), as
 21 redesignated by subparagraph (B), and insert-
 22 ing “fuel”, and

23 (E) in paragraph (7)(B) (as amended by
 24 subsection (a)(2)(B) and redesignated by sub-
 25 paragraph (B)) (2)—

1 (i) by striking “biodiesel mixture (as
2 defined in section 6426(c)(3))” and insert-
3 ing “biodiesel (within the meaning of sec-
4 tion 40A)”, and

5 (ii) by striking “March 31, 2016” and
6 inserting “December 31, 2018”.

7 (4) GUIDANCE.—Not later than 30 days after
8 the date of the enactment of this Act, the Secretary
9 of the Treasury, or the Secretary’s delegate, shall
10 issue preliminary guidance with respect to the
11 amendments made by this subsection.

12 (5) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply to fuel sold or used
14 after March 31, 2016.

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