

111TH CONGRESS
1ST SESSION

H. R. 4070

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2009

Mr. POMEROY (for himself and Mr. SHIMKUS) 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 modify the incentives for the production of 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. REFORM OF BIODIESEL INCOME TAX INCEN-**
4 **TIVES.**

5 (a) IN GENERAL.—Section 40A of the Internal Rev-
6 enue Code of 1986 is amended to read as follows:

7 **“SEC. 40A. BIODIESEL PRODUCTION.**

8 “(a) IN GENERAL.—For purposes of section 38, the
9 biodiesel fuels credit determined under this section for the

1 taxable year is \$1.00 for each gallon of biodiesel produced
2 by the taxpayer and which during the taxable year—

3 “(1) is sold by such producer to another per-
4 son—

5 “(A) for use by such other person’s trade
6 or business (other than casual off-farm produc-
7 tion),

8 “(B) for use by such other person as a fuel
9 in a trade or business, or

10 “(C) who sells such biodiesel at retail to
11 another person and places such biodiesel in the
12 fuel tank of such other person, or

13 “(2) is used or sold by such producer for any
14 purpose described in paragraph (1).

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

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

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

24 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
25 TAX.—The amount of the credit determined under this

1 section with respect to any biodiesel shall be properly re-
2 duced to take into account any benefit provided with re-
3 spect to such biodiesel solely by reason of the application
4 of section 6426 or 6427(e).

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

7 “(1) BIODIESEL.—The term ‘biodiesel’ means
8 liquid fuel derived from biomass which meets—

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

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

15 Such term shall not include any liquid with respect
16 to which a credit may be determined under section
17 40.

18 “(2) BIODIESEL NOT USED AS FUEL.—If—

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

21 “(B) any person does not use such fuel for
22 the purpose described in subsection (a),

23 then there is hereby imposed on such person a tax
24 equal to the product of the rate applicable under

1 subsection (a) and the number of gallons of such
2 biodiesel.

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

7 “(4) LIMITATION TO BIODIESEL PRODUCED IN
8 THE UNITED STATES.—No credit shall be deter-
9 mined under this section with respect to any bio-
10 diesel unless such biodiesel is produced in the United
11 States from raw feedstock. For purposes of this
12 paragraph, the term ‘United States’ includes any
13 possession of the United States.

14 “(5) LIMITATION TO BIODIESEL WITH CONNec-
15 TION TO THE UNITED STATES.—No credit shall be
16 determined under this section with respect to any
17 biodiesel which is produced outside the United
18 States for use as a fuel outside the United States.
19 For purposes of this paragraph, the term ‘United
20 States’ includes any possession of the United States.

21 “(6) BIODIESEL TRANSFERS FROM AN IRS REG-
22 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
23 IRS REGISTERED TERMINAL OR REFINERY.—Credit
24 allowed under subsection (a) shall be allowed to the
25 terminal or refinery referred to in section

1 4081(a)(1)(B)(i) in instances where section
2 4081(a)(1)(B)(iii) is applicable. Credit allowed under
3 subsection (a) cannot be claimed by a terminal or re-
4 finery on fuel upon which the credit was previously
5 claimed by a biodiesel producer.

6 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL
7 BIODIESEL PRODUCERS.—

8 “(1) ELIGIBLE SMALL BIODIESEL PRODUCER.—

9 The term ‘eligible small biodiesel producer’ means a
10 person who, at all times during the taxable year, has
11 a productive capacity for biodiesel not in excess of
12 60,000,000 gallons.

13 “(2) AGGREGATION RULE.—For purposes of
14 the 15,000,000 gallon limitation under subsection
15 (b)(2) and the 60,000,000 gallon limitation under
16 paragraph (1), all members of the same controlled
17 group of corporations (within the meaning of section
18 267(f)) and all persons under common control (with-
19 in the meaning of section 52(b) but determined by
20 treating an interest of more than 50 percent as a
21 controlling interest) shall be treated as 1 person.

22 “(3) PARTNERSHIP, S CORPORATION, AND
23 OTHER PASS-THRU ENTITIES.—In the case of a
24 partnership, trust, S corporation, or other pass-thru
25 entity, the limitations contained in subsection (b)(2)

1 and paragraph (1) shall be applied at the entity level
2 and at the partner or similar level.

3 “(4) ALLOCATION.—For purposes of this sub-
4 section, in the case of a facility in which more than
5 1 person has an interest, productive capacity shall
6 be allocated among such persons in such manner as
7 the Secretary may prescribe.

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

10 “(A) to prevent the credit provided for in
11 subsection (b) from directly or indirectly bene-
12 fitting any person with a direct or indirect pro-
13 ductive capacity of more than 60,000,000 gal-
14 lons of biodiesel during the taxable year, or

15 “(B) to prevent any person from directly
16 or indirectly benefitting with respect to more
17 than 15,000,000 gallons during the taxable
18 year.

19 “(6) ALLOCATION OF SMALL BIODIESEL CREDIT
20 TO PATRONS OF COOPERATIVE.—

21 “(A) ELECTION TO ALLOCATE.—

22 “(i) IN GENERAL.—In the case of a
23 cooperative organization described in sec-
24 tion 1381(a), any portion of the increase
25 determined under subsection (b) for the

1 taxable year may, at the election of the or-
2 ganization, be apportioned pro rata among
3 patrons of the organization on the basis of
4 the quantity or value of business done with
5 or for such patrons for the taxable year.

6 “(ii) FORM AND EFFECT OF ELEC-
7 TION.—An election under clause (i) for any
8 taxable year shall be made on a timely
9 filed return for such year. Such election,
10 once made, shall be irrevocable for such
11 taxable year. Such election shall not take
12 effect unless the organization designates
13 the apportionment as such in a written no-
14 tice mailed to its patrons during the pay-
15 ment period described in section 1382(d).

16 “(B) TREATMENT OF ORGANIZATIONS AND
17 PATRONS.—

18 “(i) ORGANIZATIONS.—The amount of
19 the credit not apportioned to patrons pur-
20 suant to subparagraph (A) shall be in-
21 cluded in the amount determined under
22 subsection (b) for the taxable year of the
23 organization.

24 “(ii) PATRONS.—The amount of the
25 credit apportioned to patrons pursuant to

1 subparagraph (A) shall be included in the
2 amount determined under such subsection
3 for the first taxable year of each patron
4 ending on or after the last day of the pay-
5 ment period (as defined in section
6 1382(d)) for the taxable year of the orga-
7 nization or, if earlier, for the taxable year
8 of each patron ending on or after the date
9 on which the patron receives notice from
10 the cooperative of the apportionment.

11 “(iii) SPECIAL RULES FOR DECREASE
12 IN CREDITS FOR TAXABLE YEAR.—If the
13 amount of the credit of the organization
14 determined under such subsection for a
15 taxable year is less than the amount of
16 such credit shown on the return of the or-
17 ganization for such year, an amount equal
18 to the excess of—

19 “(I) such reduction, over

20 “(II) the amount not apportioned
21 to such patrons under subparagraph
22 (A) for the taxable year, shall be
23 treated as an increase in tax imposed
24 by this chapter on the organization.

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

5 “(f) RENEWABLE DIESEL.—For purposes of this
6 title—

7 “(1) TREATMENT IN THE SAME MANNER AS
8 BIODIESEL.—Except as provided in paragraph (2),
9 renewable diesel shall be treated in the same manner
10 as biodiesel.

11 “(2) EXCEPTION.—Subsection (b) shall not
12 apply with respect to renewable diesel.

13 “(3) RENEWABLE DIESEL DEFINED.—The term
14 ‘renewable diesel’ means liquid fuel derived from bio-
15 mass which meets—

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

20 “(B) the requirements of the American So-
21 ciety of Testing and Materials D975 or D396,
22 or other equivalent standard approved by the
23 Secretary.

24 Such term shall not include any liquid with respect
25 to which a credit may be determined under section

1 40. Such term does not include any fuel derived
2 from coprocessing biomass with a feedstock which is
3 not biomass. For purposes of this paragraph, the
4 term ‘biomass’ has the meaning given such term by
5 section 45K(c)(3).

6 “(4) CERTAIN AVIATION FUEL.—Except as pro-
7 vided in the last 3 sentences of paragraph (3), the
8 term ‘renewable diesel’ shall include fuel derived
9 from biomass which meets the requirements of a De-
10 partment of Defense specification for military jet
11 fuel or an American Society of Testing and Mate-
12 rials specification for aviation turbine fuel.

13 “(g) TERMINATION.—This section shall not apply to
14 any sale or use after December 31, 2014.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for subpart D of part IV of subchapter A of chapter 1
17 of such Code is amended by striking the item relating to
18 section 40A and inserting the following new item:

“Sec. 40A. Biodiesel production.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to biodiesel sold or used after De-
21 cember 31, 2009.

22 **SEC. 2. REFORM OF BIODIESEL EXCISE TAX INCENTIVES.**

23 (a) IN GENERAL.—Subsection (c) of section 6426 of
24 the Internal Revenue Code of 1986 is amended to read
25 as follows:

1 “(c) BIODIESEL CREDIT.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the biodiesel credit is \$1.00 for each gallon of
4 biodiesel produced by the taxpayer and which—

5 “(A) is sold by such producer to another
6 person—

7 “(i) for use by such other person’s
8 trade or business (other than casual off-
9 farm production),

10 “(ii) for use by such other person as
11 a fuel in a trade or business, or

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

15 “(B) is used or sold by such producer for
16 any purpose described in subparagraph (A).

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

20 “(3) BIODIESEL TRANSFERS FROM AN IRS REG-
21 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
22 IRS REGISTERED TERMINAL.—Credit allowed under
23 this subsection can be claimed by a registered ter-
24 minal or refinery in instances where section
25 4081(a)(1)(B) is applicable. Credit allowed under

1 this subsection cannot be claimed by a terminal or
2 refinery on fuel upon which the credit was previously
3 claimed by a biodiesel producer.

4 “(4) TERMINATION.—This subsection shall not
5 apply to any sale, use, or removal for any period
6 after December 31, 2014.”.

7 (b) PAYMENT OF CREDIT.—Subsection (e) of section
8 6427 of such Code is amended—

9 (1) by striking “or the biodiesel mixture credit”
10 in paragraph (1),

11 (2) by redesignating paragraphs (3) through
12 (6) as paragraphs (4) through (7), respectively, and
13 by inserting after paragraph (2) the following new
14 paragraph:

15 “(3) BIODIESEL CREDIT.—If any person pro-
16 duces biodiesel and sells or uses such biodiesel as
17 provided in section 6426(c), the Secretary shall pay
18 (without interest) to such person an amount equal to
19 the biodiesel credit with respect to such biodiesel.”,

20 (3) by striking “paragraph (1) or (2)” each
21 place it appears in paragraphs (4) and (6), as reded-
22 icated by paragraph (2), and inserting “paragraph
23 (1), (2), or (3)”,

1 (4) by striking “alternative fuel” each place it
2 appears in paragraphs (4) and (6), as redesignated
3 by paragraph (2), and inserting “fuel”, and

4 (5) by striking “biodiesel mixture (as defined in
5 section 6426(c)(3))” in paragraph (7)(B), as so re-
6 designated, and inserting “biodiesel (within the
7 meaning of section 40A)”.

8 (c) EXEMPTION FOR TRANSFERS BETWEEN REG-
9 ISTERED FACILITIES.—Subparagraph (B) of section
10 4081(a)(1) of such Code is amended by adding at the end
11 the following new clause:

12 “(iii) The tax imposed by this para-
13 graph shall not apply to biodiesel that is
14 removed from a registered IRS biodiesel
15 plant and is transferred to a IRS reg-
16 istered terminal or refinery.”.

17 (d) PRODUCER REGISTRATION REQUIREMENT.—
18 Subsection (a) of section 6426 of such Code is amended
19 by striking “subsections (d) and (e)” in the flush sentence
20 at the end and inserting “subsections (c), (d), and (e)”.

21 (e) RECAPTURE.—Subsection (f) of section 6426 of
22 such Code is amended to read as follows:

23 “(f) RECAPTURE.—

24 “(1) ALCOHOL FUEL MIXTURES.—If—

1 “(A) any credit was determined under this
2 section with respect to alcohol used in the pro-
3 duction of any alcohol fuel mixture, and

4 “(B) any person—

5 “(i) separates the alcohol from the
6 mixture, or

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

9 then there is hereby imposed on such person a tax
10 equal to the product of the applicable amount and
11 the number of gallons of such alcohol.

12 “(2) BIODIESEL.—If any credit was determined
13 under this section with respect to the production of
14 any biodiesel and any person does not use such bio-
15 diesel for a purpose described in subsection (c)(1),
16 then there is hereby imposed on such person a tax
17 equal to \$1 for each gallon of such biodiesel.

18 “(3) APPLICABLE LAWS.—All provisions of law,
19 including penalties, shall, insofar as applicable and
20 not inconsistent with this section, apply in respect of
21 any tax imposed under paragraph (1) or (2) as if
22 such tax were imposed by section 4081 and not by
23 this section.”.

24 (f) CLERICAL AMENDMENT.—The heading of section
25 6426 of such Code (and the item relating to such section

1 in the table of sections for subchapter B of chapter 65
2 of such Code) is amended by striking “alcohol fuel, bio-
3 diesel, and alternative fuel mixtures” and inserting “alco-
4 hol fuel mixtures, biodiesel production, and alternative fuel
5 mixtures”.

6 (g) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to biodiesel sold or used after De-
8 cember 31, 2009.

9 **SEC. 3. BIODIESEL TREATED AS TAXABLE FUEL.**

10 (a) BIODIESEL TREATED AS TAXABLE FUEL.—
11 Clause (i) of section 4083(a)(3)(A) of such Code is amend-
12 ed by inserting “, including biodiesel (as defined in section
13 6426(c)(3)),” after “(other than gasoline)”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to biodiesel removed, entered, or
16 sold after the date which is 6 months after the date of
17 the enactment of this Act.

○