

114TH CONGRESS
1ST SESSION

H. R. 4181

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 3, 2015

Mrs. NOEM (for herself, Mr. PASCRELL, and Mr. BLUM) 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. SHORT TITLE.**

4 This Act may be cited as the “Biodiesel Tax Incentive
5 Reform and Extension Act of 2015”.

6 **SEC. 2. REFORM OF BIODIESEL INCOME TAX INCENTIVES.**

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

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

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 such producer to another per-
7 son—

8 “(A) for use by such other person’s trade
9 or business (other than casual off-farm produc-
10 tion),

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

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

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

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

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

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

1 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
2 TAX.—The amount of the credit determined under this
3 section with respect to any biodiesel shall be reduced to
4 take into account any benefit provided with respect to such
5 biodiesel solely by reason of the application of section
6 6426 or 6427(e).

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

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

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

15 “(B) the requirements of the American So-
16 ciety for Testing and Materials D6751.

17 Such term shall not include any liquid with respect
18 to which a credit may be determined under section
19 40.

20 “(2) BIODIESEL NOT USED FOR A QUALIFIED
21 PURPOSE.—If—

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

1 “(B) any person does not use such bio-
2 diesel for the purpose described in subsection
3 (a),
4 then there is hereby imposed on such person a tax
5 equal to the product of the rate applicable under
6 subsection (a) and the number of gallons of such
7 biodiesel.

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

12 “(4) LIMITATION TO BIODIESEL PRODUCED IN
13 THE UNITED STATES.—No credit shall be deter-
14 mined under this section with respect to any bio-
15 diesel unless such biodiesel is produced in the United
16 States from feedstocks approved for the Biomass-
17 based Diesel program (biodiesel, renewable diesel,
18 and renewable aviation fuel production under the
19 Renewable Fuels Program as enacted by the Energy
20 Independence and Security Act of 2007 (40 C.F.R.
21 part 80.1426(f) and 80.1416)). For purposes of this
22 paragraph, the term ‘United States’ includes any
23 possession of the United States.

24 “(5) BIODIESEL TRANSFERS FROM AN IRS REG-
25 ISTERED BIODIESEL PRODUCTION FACILITY TO AN

1 IRS REGISTERED TERMINAL OR REFINERY.—The
2 credit allowed under subsection (a) shall be allowed
3 to the terminal or refinery referred to in section
4 4081(a)(1)(B)(i) in instances where section
5 4081(a)(1)(B)(iii) is applicable. The credit allowed
6 under subsection (a) cannot be claimed by a ter-
7 minal or refinery on fuel upon which the credit was
8 previously claimed by a biodiesel producer.

9 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL
10 BIODIESEL PRODUCERS.—

11 “(1) ELIGIBLE SMALL BIODIESEL PRODUCER.—
12 The term ‘eligible small biodiesel producer’ means a
13 person who at all times during the taxable year has
14 a productive capacity for biodiesel not in excess of
15 60,000,000 gallons.

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

1 “(3) PARTNERSHIP, S CORPORATION, AND
2 OTHER PASS-THRU ENTITIES.—In the case of a
3 partnership, trust, S corporation, or other pass-thru
4 entity, the limitations contained in subsection (b)(2)
5 and paragraph (1) shall be applied at the entity level
6 and at the partner or similar level.

7 “(4) ALLOCATION.—For purposes of this sub-
8 section, in the case of a facility in which more than
9 1 person has an interest, productive capacity shall
10 be allocated among such persons in such manner as
11 the Secretary may prescribe.

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

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

19 “(B) to prevent any person from directly
20 or indirectly benefitting with respect to more
21 than 15,000,000 gallons during the taxable
22 year.

23 “(6) ALLOCATION OF SMALL BIODIESEL CREDIT
24 TO PATRONS OF COOPERATIVE.—

25 “(A) ELECTION TO ALLOCATE.—

1 “(i) IN GENERAL.—In the case of a
2 cooperative organization described in sec-
3 tion 1381(a), any portion of the increase
4 determined under subsection (b) for the
5 taxable year may, at the election of the or-
6 ganization, be apportioned pro rata among
7 patrons of the organization on the basis of
8 the quantity or value of business done with
9 or for such patrons for the taxable year.

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

20 “(B) TREATMENT OF ORGANIZATIONS AND
21 PATRONS.—

22 “(i) ORGANIZATIONS.—The amount of
23 the credit not apportioned to patrons pur-
24 suant to subparagraph (A) shall be in-
25 cluded in the amount determined under

1 subsection (b) for the taxable year of the
2 organization.

3 “(ii) PATRONS.—The amount of the
4 credit apportioned to patrons pursuant to
5 subparagraph (A) shall be included in the
6 amount determined under such subsection
7 for the first taxable year of each patron
8 ending on or after the last day of the pay-
9 ment period (as defined in section
10 1382(d)) for the taxable year of the orga-
11 nization or, if earlier, for the taxable year
12 of each patron ending on or after the date
13 on which the patron receives notice from
14 the cooperative of the apportionment.

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

23 “(I) such reduction, over

24 “(II) the amount not apportioned
25 to such patrons under subparagraph

1 (A) for the taxable year, shall be
2 treated as an increase in tax imposed
3 by this chapter on the organization.

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

8 “(f) RENEWABLE DIESEL.—For purposes of this
9 title—

10 “(1) TREATMENT IN THE SAME MANNER AS
11 BIODIESEL.—Renewable diesel shall be treated in
12 the same manner as biodiesel.

13 “(2) RENEWABLE DIESEL DEFINED.—

14 “(A) IN GENERAL.—The term ‘renewable
15 diesel’ means liquid fuel derived from biomass
16 which—

17 “(i) is not a mono-alkyl ester,

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

20 “(iii) meets the requirements of the
21 American Society for Testing and Mate-
22 rials D–975–13a Grade No. 1–D or No. 2–
23 D specifications.

24 “(B) CERTAIN AVIATION FUEL.—Except
25 as provided in subparagraph (C), the term ‘re-

1 newable diesel’ shall include fuel derived from
2 biomass (as defined in section 45K(c)(3)) which
3 meets the requirements of a Department of De-
4 fense specification for military jet fuel or an
5 American Society for Testing and Materials
6 specification for aviation turbine fuel.

7 “(C) EXCEPTIONS.—The term ‘renewable
8 diesel’ shall not include—

9 “(i) any liquid with respect to which
10 a credit may be determined under section
11 40,

12 “(ii) any fuel derived from coproc-
13 essing biomass (as defined in section
14 45K(c)(3)) with a feedstock which is not
15 biomass (as so defined), and

16 “(iii) any fuel unless such fuel is
17 chemically indistinguishable from a petro-
18 leum-derived fuel that meets existing die-
19 sel, gasoline, or aviation fuel quality speci-
20 fications.

21 “(g) TERMINATION.—This section shall not apply to
22 any sale or use after December 31, 2018.

23 “(h) REGULATIONS.—The Secretary shall prescribe
24 such regulations as may be necessary for the purposes of

1 carrying out this section within 30 days after enactment
2 of this Act.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of the Internal Revenue Code of 1986 is amended by strik-
6 ing the item relating to section 40A and inserting the fol-
7 lowing new item:

“Sec. 40A. Biodiesel production.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to biodiesel sold or used after De-
10 cember 31, 2014.

11 **SEC. 3. REFORM OF BIODIESEL EXCISE TAX INCENTIVES.**

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

15 “(c) BIODIESEL CREDIT.—

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

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

21 “(i) for use by such other person’s
22 trade or business (other than casual off-
23 farm production),

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

1 “(iii) 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 or sold by such producer for
5 any purpose 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) BIODIESEL TRANSFERS FROM AN IRS REG-
10 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
11 IRS REGISTERED TERMINAL OR REFINERY.—The
12 credit allowed under this subsection can be claimed
13 by a registered terminal or refinery in instances
14 where section 4081(a)(1)(B)(iii) is applicable. The
15 credit allowed under this subsection cannot be
16 claimed by a terminal or refinery on fuel upon which
17 the credit was previously claimed by a biodiesel pro-
18 ducer.

19 “(4) TERMINATION.—This subsection shall not
20 apply to any sale, use, or removal for any period
21 after December 31, 2018.”.

22 (b) PAYMENT OF CREDIT.—Subsection (e) of section
23 6427 of the Internal Revenue Code of 1986 is amended—

24 (1) by striking “or the biodiesel mixture credit”
25 in paragraph (1),

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

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

10 (3) by striking “paragraph (1) or (2)” each
11 place it appears in paragraphs (4) and (6), as redesi-
12 gnated by paragraph (2), and inserting “paragraph
13 (1), (2), or (3)”,

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

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

21 (6) by striking “2014” in paragraph (7)(B), as
22 so redesignated, and inserting “2018”.

23 (c) TAX IMPOSED ON SALE BY PERSONS CLAIMING
24 EXCISE TAX CREDIT.—Subparagraph (A) of section
25 4081(a)(1) is amended by striking “and” at the end of

1 clause (iii), by striking the period at the end of clause (iv)
 2 and inserting “, and”, and by adding at the end the fol-
 3 lowing new clause:

4 “(v) the sale of biodiesel to any per-
 5 son by any person properly claiming the
 6 credit under section 6426(c) with respect
 7 to the biodiesel so sold.”.

8 (d) EXEMPTION FOR BIODIESEL TRANSFERRED
 9 FROM A REGISTERED PRODUCER TO A REGISTERED TER-
 10 MINAL OR REFINERY.—Subparagraph (B) of section
 11 4081(a)(1) of the Internal Revenue Code of 1986 is
 12 amended—

13 (1) by striking “clause (ii)” in clause (i) and in-
 14 serting “clauses (ii) and (iii)”, and

15 (2) by adding at the end the following new
 16 clause:

17 “(iii) EXEMPTIONS FOR BIODIESEL
 18 TRANSFERRED FROM A REGISTERED PRO-
 19 DUCER TO A REGISTERED TERMINAL OR
 20 REFINERY.—The tax imposed by this para-
 21 graph shall not apply to any removal or
 22 entry of biodiesel (as defined in section
 23 40A(d)(1)) transferred in bulk by rail,
 24 truck, pipeline, or vessel to a terminal or
 25 refinery if—

1 “(I) such biodiesel was produced
2 by a person who is registered under
3 section 4101 as a producer of bio-
4 diesel and who provides reporting
5 under the ExStars fuel reporting sys-
6 tem of the Internal Revenue Service,
7 and

8 “(II) the operator of such ter-
9 minal or refinery is registered under
10 section 4101.”.

11 (e) PRODUCER REGISTRATION REQUIREMENT.—
12 Subsection (a) of section 6426 of the Internal Revenue
13 Code of 1986 is amended by striking “subsections (d) and
14 (e)” in the flush sentence at the end and inserting “sub-
15 sections (c), (d), and (e)”.

16 (f) RECAPTURE.—Subsection (f) of section 6426 of
17 the Internal Revenue Code of 1986 is amended to read
18 as follows:

19 “(f) RECAPTURE OF BIODIESEL CREDIT.—

20 “(1) IN GENERAL.—If any credit was deter-
21 mined under this section with respect to the produc-
22 tion of any biodiesel and any person does not use
23 such biodiesel for a purpose described in subsection
24 (c)(1), then there is hereby imposed on such person
25 a tax equal to \$1 for each gallon of such biodiesel.

1 “(2) APPLICABLE LAWS.—All provisions of law,
2 including penalties, shall, insofar as applicable and
3 not inconsistent with this section, apply in respect of
4 any tax imposed under this subsection as if such tax
5 were imposed by section 4081 and not by this sec-
6 tion.”.

7 (g) CLERICAL AMENDMENTS.—

8 (1) The heading of section 6426 of the Internal
9 Revenue Code of 1986 is amended by striking “**AL-**
10 **COHOL FUEL, BIODIESEL, AND ALTERNATIVE**
11 **FUEL MIXTURES**” and inserting “**ALCOHOL FUEL**
12 **MIXTURES, BIODIESEL PRODUCTION, AND AL-**
13 **TERNATIVE FUEL MIXTURES**”.

14 (2) The item relating to section 6426 in the
15 table of sections for subchapter B of chapter 65 of
16 such Code is amended by striking “alcohol fuel, bio-
17 diesel, and alternative fuel mixtures” and inserting
18 “alcohol fuel mixtures, biodiesel production, and al-
19 ternative fuel mixtures”.

20 (h) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to biodiesel sold or used after De-
22 cember 31, 2014.

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