

111TH CONGRESS
1ST SESSION

H. R. 907

To amend the Internal Revenue Code of 1986 to provide for a livestock energy investment credit.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. TERRY 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 provide for a livestock energy investment 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. LIVESTOCK ENERGY INVESTMENT CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 is amended by inserting after section 40A the fol-
7 lowing new section:

1 **“SEC. 40B. RENEWABLE ENERGY PRODUCED FROM LIVE-**
2 **STOCK WASTE USING EPA-VERIFIED TECH-**
3 **NOLOGIES FOR THE COMPREHENSIVE ENVI-**
4 **RONMENTAL TREATMENT OF LIVESTOCK**
5 **WASTE.**

6 “(a) IN GENERAL.—For purposes of section 38, the
7 livestock-derived renewable energy production credit for
8 any taxable year is an amount equal to the product of—

9 “(1) \$5.56, and

10 “(2) each million British thermal units
11 (mmBtu) of livestock-derived renewable energy—

12 “(A) produced by the taxpayer—

13 “(i) from qualified energy feedstock,

14 “(ii) at a qualified facility during the
15 7-year period beginning on the date the fa-
16 cility was originally placed in service, and

17 “(iii) using an EPA-verified tech-
18 nology that provides comprehensive live-
19 stock waste treatment addressing signifi-
20 cant reductions to nitrogen and phos-
21 phorus nutrient discharges, odor and air
22 emissions including greenhouse gases and
23 ammonia, methane, hydrogen sulfide and
24 volatile organic compounds, and

25 “(B) either—

1 “(i) sold by the taxpayer to an unre-
2 lated person during the taxable year, or

3 “(ii) used by the taxpayer during the
4 taxable year.

5 “(b) DEFINITIONS.—For purposes of this section—

6 “(1) LIVESTOCK-DERIVED RENEWABLE EN-
7 ERGY.—The term ‘livestock-derived renewable en-
8 ergy’ means fuel which is derived by processing
9 qualified energy feedstock.

10 “(2) QUALIFIED ENERGY FEEDSTOCK.—

11 “(A) IN GENERAL.—The term ‘qualified
12 energy feedstock’ means—

13 “(i) manure of livestock (including
14 any litter, wood shavings, straw, rice hulls,
15 bedding material, and other materials inci-
16 dentally collected with the manure),

17 “(ii) any nonhazardous, organic agri-
18 cultural or food industry byproduct or
19 waste material (cellulosic or otherwise) de-
20 rived from—

21 “(I) renewable biomass,

22 “(II) harvesting residue,

23 “(III) any waste or byproduct
24 from fermentation processes, ethanol
25 production, biodiesel production,

1 slaughter of livestock, food produc-
2 tion, food processing, or food service,
3 or

4 “(IV) other organic wastes, by-
5 products, or sources,

6 “(iii) solid wood waste materials, in-
7 cluding waste pallets, crates, dunnage,
8 manufacturing and construction wood
9 wastes, and tree trimmings, or

10 “(iv) agricultural or forestry crops.

11 “(B) RENEWABLE BIOMASS.—The term
12 ‘renewable biomass’ means materials from pre-
13 commercial thinning or invasive species from
14 National Forest System land and public lands
15 (as defined in section 103 of the Federal Land
16 Policy and Management Act of 1976 (43 U.S.C.
17 1702)) that—

18 “(i)(I) are byproducts of preventive
19 treatments that are removed—

20 “(aa) to reduce or contain dis-
21 ease or insect infestation, or

22 “(bb) to restore ecosystem
23 health,

24 “(II) would not otherwise be used for
25 higher-value products, and

1 “(III) are harvested in accordance
2 with applicable law and land management
3 plans and the requirements for—

4 “(aa) old-growth maintenance,
5 restoration, and management direc-
6 tion of paragraphs (2), (3), and (4) of
7 subsection (e) of section 102 of the
8 Healthy Forests Restoration Act of
9 2003 (16 U.S.C. 6512), and

10 “(bb) large tree retention of sub-
11 section (f) of that section, or

12 “(ii) any organic matter that is avail-
13 able on a renewable or recurring basis
14 from non-Federal land or land belonging to
15 an Indian or Indian tribe that is held in
16 trust by the United States or subject to a
17 restriction against alienation imposed by
18 the United States, including—

19 “(I) renewable plant material
20 (such as feed grains, other agricul-
21 tural commodities, other plants and
22 trees, and algae), and

23 “(II) waste material (such as
24 crop residue, other vegetative waste
25 material (including wood waste and

1 wood residues), animal waste and by-
2 products (including fats, oils, greases,
3 and manure), food waste, and yard
4 waste).

5 “(C) LIVESTOCK.—The term ‘livestock’ in-
6 cludes poultry, cattle, sheep, swine, goats,
7 horses, mules, and other equines.

8 “(3) QUALIFIED FACILITY.—The term ‘quali-
9 fied facility’ means a facility—

10 “(A) which is owned by the taxpayer,

11 “(B) which is located in the United States,

12 “(C) which is originally placed in service
13 before January 1, 2018, and

14 “(D) the livestock-derived renewable en-
15 ergy output of which is—

16 “(i) marketed through interconnection
17 with a gas distribution or transmission
18 pipeline, or

19 “(ii) used on-site or off-site in a quan-
20 tity that is sufficient to offset the con-
21 sumption of at least 50,000 mmBtu annu-
22 ally of commercially marketed fuel derived
23 from coal, crude oil, natural gas, propane,
24 or other fossil fuel.

1 “(4) EPA-VERIFIED TECHNOLOGY.—The term
2 ‘EPA-verified technology’ means any technology the
3 performance of which is verified by the Environ-
4 mental Technology Verification Program of the En-
5 vironmental Protection Agency.

6 “(c) REDUCTION OF CREDIT BASED ON MARKET
7 PRICE OF BTUS.—

8 “(1) IN GENERAL.—If the market price per
9 mmBtu’s exceeds \$11, the amount otherwise appli-
10 cable under subsection (a)(1) for the taxable year
11 (without regard to paragraph (1)) shall be reduced
12 (but not below zero) by the amount which bears the
13 same ratio to the amount otherwise so applicable as
14 such excess bears to \$5.

15 “(2) ROUNDING.—Any reduction determined
16 under subparagraph (A) which is not a multiple of
17 10 cents shall be rounded to the nearest multiple of
18 10 cents.

19 “(3) MARKET PRICE.—For purposes of this
20 paragraph, the market price per mmBtu for any tax-
21 able year shall be the daily average market price per
22 mmBtu on the Chicago exchange during the 3-
23 month period ending at the close of the preceding
24 taxable year.

1 “(d) SPECIAL RULES.—For purposes of this sec-
2 tion—

3 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
4 PAYER.—In the case of a facility in which more than
5 1 person has an ownership interest, except to the ex-
6 tent provided in regulations prescribed by the Sec-
7 retary, production from the qualified facility shall be
8 allocated among such persons in proportion to their
9 respective ownership interests in the gross sales
10 from such qualified facility.

11 “(2) RELATED PERSONS.—Persons shall be
12 treated as related to each other if such persons
13 would be treated as a single employer under the reg-
14 ulations prescribed under section 52(b). In the case
15 of a corporation which is a member of an affiliated
16 group of corporations filing a consolidated return,
17 such corporation shall be treated as selling livestock-
18 derived renewable energy to an unrelated person if
19 such biogas is sold to such a person by another
20 member of such group.

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

1 “(4) COORDINATION WITH CREDIT FROM PRO-
2 DUCING FUEL FROM A NONCONVENTIONAL
3 SOURCE.—The amount of livestock-derived renew-
4 able energy produced and sold or used by the tax-
5 payer during any taxable year which is taken into
6 account under this section shall be reduced by the
7 amount of livestock-derived renewable energy pro-
8 duced and sold by the taxpayer in such taxable year
9 which is taken into account under section 45K.

10 “(5) CREDIT ELIGIBILITY IN THE CASE OF GOV-
11 ERNMENT-OWNED FACILITIES USING POULTRY
12 WASTE.—In the case of a facility using poultry
13 waste to produce livestock-derived renewable energy
14 and owned by a governmental unit, subparagraph
15 (B) of subsection (b)(3) shall be applied by sub-
16 stituting ‘is leased or operated by the taxpayer’ for
17 ‘is owned by the taxpayer’.

18 “(e) TRANSFERABILITY OF CREDIT.—

19 “(1) IN GENERAL.—A taxpayer may transfer
20 the credit under this section through an assignment
21 to any person. Such transfer may be revoked only
22 with the consent of the Secretary.

23 “(2) REGULATIONS.—The Secretary shall pre-
24 scribe such regulations as necessary to ensure that
25 any credit transferred under paragraph (1) is

1 claimed once and not reassigned by such other per-
2 son.

3 “(f) ADJUSTMENT BASED ON INFLATION.—

4 “(1) IN GENERAL.—The \$5.56 amount in sub-
5 section (a)(1) and the \$11 amount in subsection
6 (c)(2)(A) shall each be adjusted by multiplying such
7 amount by the inflation adjustment factor for the
8 calendar year in which the sale occurs. If any
9 amount as increased under the preceding sentence is
10 not a multiple of 0.1 cent, such amount shall be
11 rounded to the nearest multiple of 0.1 cent.

12 “(2) COMPUTATION OF INFLATION ADJUST-
13 MENT FACTOR.—

14 “(A) IN GENERAL.—The Secretary shall,
15 not later than April 1 of each calendar year, de-
16 termine and publish in the Federal Register the
17 inflation adjustment factor in accordance with
18 this paragraph.

19 “(B) INFLATION ADJUSTMENT FACTOR.—
20 The term ‘inflation adjustment factor’ means,
21 with respect to a calendar year, a fraction the
22 numerator of which is the GDP implicit price
23 deflator for the preceding calendar year and the
24 denominator of which is the GDP implicit price
25 deflator for calendar year 2007. The term

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to energy produced, and sold or
3 used, in taxable years beginning after the date of the en-
4 actment of this Act.

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