

118TH CONGRESS  
1ST SESSION

# S. 2378

To amend the Internal Revenue Code of 1986 to increase excise taxes on fuel used by private jets, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 19, 2023

Mr. MARKEY (for himself, Ms. WARREN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to increase excise taxes on fuel used by private jets, 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 “Fueling Alternative  
5 Transportation with a Carbon Aviation Tax Act of 2023”.

6 **SEC. 2. INCREASE IN EXCISE TAX FOR FUEL USED BY PRI-**  
7 **VATE JETS.**

8 (a) IN GENERAL.—

1           (1) RETAIL EXCISE TAX.—Section 4041(c) of  
2 the Internal Revenue Code of 1986 is amended by  
3 striking paragraph (3) and inserting the following:

4           “(3) RATE OF TAX.—The rate of tax imposed  
5 by this subsection shall be—

6                   “(A) with respect to any sale or use for  
7 commercial aviation, 4.3 cents per gallon, and

8                   “(B) with respect to any sale or use which  
9 is not described in subparagraph (A), an  
10 amount equal to the sum of—

11                           “(i) 35.9 cents per gallon, plus

12                           “(ii) \$1.589 per gallon.

13           “(4) INFLATION ADJUSTMENT.—In the case of  
14 any calendar year beginning after 2024, the dollar  
15 amount in paragraph (3)(B)(ii) shall be increased by  
16 an amount equal to—

17                   “(A) such dollar amount, multiplied by

18                   “(B) the cost-of-living adjustment deter-  
19 mined under section 1(f)(3) for the calendar  
20 year, determined by substituting ‘calendar year  
21 2023’ for ‘calendar year 2016’ in subparagraph  
22 (A)(ii) thereof.”.

23           (2) MANUFACTURERS EXCISE TAX.—Section  
24 4081(a)(2) of such Code is amended—

1 (A) in subparagraph (C), by striking  
2 clause (ii) and inserting the following:

3 “(ii) in the case of use for aviation  
4 not described in clause (i), an amount  
5 equal to the sum of—

6 “(I) 35.9 cents per gallon, plus

7 “(II) \$1.589 per gallon.”, and

8 (B) by adding at the end the following:

9 “(E) INFLATION ADJUSTMENT.—In the  
10 case of any calendar year beginning after 2024,  
11 the dollar amount in subparagraph (C)(ii)(II)  
12 shall be increased by an amount equal to—

13 “(i) such dollar amount, multiplied by

14 “(ii) the cost-of-living adjustment de-  
15 termined under section 1(f)(3) for the cal-  
16 endar year, determined by substituting  
17 ‘calendar year 2023’ for ‘calendar year  
18 2016’ in subparagraph (A)(ii) thereof.”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Section 4081(d)(2) of such Code is  
21 amended by striking “(a)(2)(C)(ii)” and insert-  
22 ing “(a)(2)(C)(ii)(I)”.

23 (B) Section 6427(l)(4)(B)(ii)(II) of such  
24 Code is amended by striking “section

1           4081(a)(2)(C)(ii)” and inserting “section  
2           4081(a)(2)(C)(ii)(I)”.

3           (C) Section 9503(c)(5)(B) of such Code is  
4           amended by striking “21.8 cents” and inserting  
5           “35.9 cents”.

6           (b) REFUND OR CREDIT IN CASES OF REASONABLE  
7 CAUSE.—Section 6427 of the Internal Revenue Code of  
8 1986 is amended by inserting after subsection (e) the fol-  
9 lowing new subsection:

10          “(f) EXCEPTION FROM INCREASE IN RATE OF TAX  
11 FOR CERTAIN LIQUIDS USED AS FUEL IN NON-COMMER-  
12 CIAL AVIATION.—

13           “(1) RETAIL EXCISE TAX.—Except as provided  
14           in subsection (k), in the case of any fuel on the sale  
15           of which tax was imposed under section 4041(c) for  
16           which the rate of tax was determined under para-  
17           graph (3)(B) of such section, if the Secretary deter-  
18           mines (pursuant to such regulations as are pre-  
19           scribed by the Secretary) that there is reasonable  
20           cause that the increase in the rate of tax pursuant  
21           to clause (ii) of such paragraph should not apply  
22           with respect to such fuel (such as in cases where the  
23           fuel was used in an aircraft which was engaged in  
24           scientific research, an evacuation from a natural dis-  
25           aster, or assistance in a medical emergency), the

1 Secretary shall pay (without interest) to the ultimate  
2 purchaser of such fuel an amount equal to the in-  
3 crease in the amount of the tax imposed on such  
4 fuel pursuant to such clause.

5 “(2) MANUFACTURERS EXCISE TAX.—Except as  
6 provided in subsection (k), in the case of any ker-  
7 osene on which tax was imposed under section 4081  
8 for which the rate of tax was determined under sub-  
9 section (a)(2)(C)(ii) of such section, if the Secretary  
10 determines (pursuant to such regulations as are pre-  
11 scribed by the Secretary) that there is reasonable  
12 cause that the increase in the rate of tax pursuant  
13 to subclause (II) of such subsection should not apply  
14 with respect to such kerosene (such as in cases  
15 where the kerosene was used in an aircraft which  
16 was engaged in scientific research, an evacuation  
17 from a natural disaster, or assistance in a medical  
18 emergency), the Secretary shall pay (without inter-  
19 est) to the ultimate purchaser of such kerosene an  
20 amount equal to the increase in the amount of the  
21 tax imposed on such kerosene pursuant to such sub-  
22 clause.

23 “(3) TERMINATION.—This subsection shall not  
24 apply to any fuel sold or used after January 1,  
25 2026.”.

1 (c) ELIMINATION OF EXEMPTION FROM AIR TRANS-  
 2 PORTATION EXCISE TAX.—Section 4261(f) of the Internal  
 3 Revenue Code of 1986 is amended to read as follows:

4 “(f) EXEMPTION FOR CERTAIN USES.—

5 “(1) IN GENERAL.—No tax shall be imposed  
 6 under subsection (a) or (b) on air transportation by  
 7 helicopter or by fixed-wing aircraft for the purpose  
 8 of the planting, cultivation, cutting, or transpor-  
 9 tation of, or caring for, trees.

10 “(2) REQUIREMENT.—Paragraph (1) shall  
 11 apply only if the helicopter or fixed-wing aircraft  
 12 does not take off from, or land at, a facility eligible  
 13 for assistance under the Airport and Airway Devel-  
 14 opment Act of 1970, or otherwise use services pro-  
 15 vided pursuant to section 44509 or 44913(b) or sub-  
 16 chapter I of chapter 471 of title 49, United States  
 17 Code, during such use.”.

18 (d) EFFECTIVE DATE.—The amendments made by  
 19 this section shall take effect on January 1, 2024.

20 **SEC. 3. FUNDING TO SUPPORT CLEAN COMMUNITIES**  
 21 **TRUST FUND.**

22 (a) IN GENERAL.—Subchapter A of chapter 98 of the  
 23 Internal Revenue Code of 1986 is amended by adding at  
 24 the end the following new section:

1 **“SEC. 9512. FUNDING TO SUPPORT CLEAN COMMUNITIES**  
 2 **TRUST FUND.**

3 “(a) ESTABLISHMENT AND FUNDING.—There is  
 4 hereby established in the Treasury of the United States  
 5 a trust fund to be referred to as the ‘Funding to Support  
 6 Clean Communities Trust Fund’, consisting of such  
 7 amounts as may be appropriated or credited to such trust  
 8 fund as provided for in this section and section 9602(b).

9 “(b) TRANSFERS TO TRUST FUND.—There are here-  
 10 by appropriated to the Funding to Support Clean Commu-  
 11 nities Trust Fund amounts equivalent to the taxes re-  
 12 ceived in the Treasury under—

13 “(1) section 4041(c) to the extent attributable  
 14 to the rate specified in paragraph (3)(B)(ii) of such  
 15 section, and

16 “(2) section 4081 with respect to kerosene to  
 17 the extent attributable to the rate specified in sec-  
 18 tion 4081(a)(2)(C)(ii)(II).

19 “(c) EXPENDITURES FROM TRUST FUND.—

20 “(1) IN GENERAL.—Subject to paragraph (2),  
 21 amounts in the Funding to Support Clean Commu-  
 22 nities Trust Fund shall be available, as provided by  
 23 appropriation Acts, for making expenditures for  
 24 grants and other activities—

25 “(A) authorized under subsections (a)  
 26 through (c) of section 103 and section 105 of

1 the Clean Air Act (42 U.S.C. 7403(a)–(c),  
2 7405), including grants and other activities  
3 to—

4 “(i) deploy, integrate, support, and  
5 maintain fenceline air monitoring, screen-  
6 ing air monitoring, national air toxics  
7 trend stations, and other air toxics and  
8 community monitoring,

9 “(ii) expand the national ambient air  
10 quality monitoring network with new  
11 multipollutant monitoring stations,

12 “(iii) replace, repair, operate, and  
13 maintain existing monitors, and

14 “(iv) deploy, integrate, and operate  
15 air quality sensors in low-income and dis-  
16 advantaged communities,

17 “(B) to expand, connect, replace, repair,  
18 operate, and maintain public transit and pas-  
19 senger rail infrastructure or systems that are  
20 located 20 miles or less from an airport, and

21 “(C) to improve public transportation, par-  
22 ticularly in underserved communities, including  
23 costs associated with efforts to provide more  
24 safe, frequent, and reliable bus service.

1           “(2) SET ASIDE FOR ENVIRONMENTAL JUSTICE  
2 COMMUNITIES.—

3           “(A) IN GENERAL.—For any calendar  
4 year, not less than 50 percent of the amounts  
5 made available under paragraph (1) shall be  
6 designated for expenditures for grants and  
7 other activities within environmental justice  
8 communities.

9           “(B) PRIORITIZATION OF FUNDS FOR COM-  
10 MUNITIES DISPROPORTIONALLY IMPACTED BY  
11 AIR POLLUTION.—With respect to making ex-  
12 penditures for grants and other activities de-  
13 scribed in paragraph (1) to environmental jus-  
14 tice communities, priority shall be given to com-  
15 munities that are disproportionately impacted  
16 by air pollution (as determined by the Secretary  
17 in consultation with the Administrator of the  
18 Environmental Protection Agency).

19           “(d) ENVIRONMENTAL JUSTICE COMMUNITY.—For  
20 purposes of this section—

21           “(1) IN GENERAL.—The term ‘environmental  
22 justice community’ means a community with signifi-  
23 cant representation of communities of color, low-in-  
24 come communities, or Tribal and Indigenous com-  
25 munities, that experiences, or is at risk of experi-

1       encing higher or more adverse human health or envi-  
2       ronmental effects.

3               “(2) COMMUNITY OF COLOR.—For purposes of  
4       paragraph (1), the term ‘community of color’ means  
5       a geographically distinct area in which the popu-  
6       lation of any of the following categories of individ-  
7       uals is higher than the average population of that  
8       category for the State in which the community is lo-  
9       cated:

10               “(A) Black.

11               “(B) African American.

12               “(C) Asian.

13               “(D) Pacific Islander.

14               “(E) Other non-White race.

15               “(F) Hispanic.

16               “(G) Latino.

17               “(H) Linguistically isolated.

18               “(I) Middle Eastern and North African.

19               “(3) TRIBAL AND INDIGENOUS COMMUNITY.—  
20       For purposes of paragraph (1), the term ‘Tribal and  
21       Indigenous community’ means a population of people  
22       who are members of—

23               “(A) a Federally recognized Indian Tribe,

24               “(B) a State-recognized Indian Tribe,

1           “(C) an Alaska Native community or orga-  
2           nization,

3           “(D) a Native Hawaiian community or or-  
4           ganization, or

5           “(E) any other Indigenous community lo-  
6           cated in a State.

7           “(4) LOW-INCOME COMMUNITY.—For purposes  
8           of paragraph (1), the term ‘low-income community’  
9           means any census block group in which 30 percent  
10          or more of the population are individuals with an  
11          annual household income equal to, or less than, the  
12          greater of—

13           “(A) an amount equal to 80 percent of the  
14           median income of the area in which the house-  
15           hold is located, as reported by the Department  
16           of Housing and Urban Development, and

17           “(B) 200 percent of the Federal poverty  
18           line.

19           “(5) POPULATION.—For purposes of para-  
20           graphs (2), (3), and (4), the term ‘population’  
21           means a census block group or series of geographi-  
22           cally contiguous blocks representing certain common  
23           characteristics, such as race, ethnicity, national ori-  
24           gin, income-level, health disparities, or other public  
25           health and socioeconomic attributes.”.

1 (b) CONFORMING AMENDMENTS TO AIRPORT AND  
2 AIRWAY TRUST FUND.—Section 9502(b)(1) of the Inter-  
3 nal Revenue Code of 1986 is amended—

4 (1) in subparagraph (A), by inserting “to the  
5 extent attributable to the rates specified in subpara-  
6 graphs (A) and (B)(i) of section 4041(c)(3),” after  
7 “(relating to aviation fuels),”, and

8 (2) in subparagraph (D), by striking “rate  
9 specified in” and inserting “rates specified in clauses  
10 (i) and (ii)(I) of”.

11 (c) CLERICAL AMENDMENT.—The table of sections  
12 for subchapter A of chapter 98 of the Internal Revenue  
13 Code of 1986 is amended by adding at the end the fol-  
14 lowing new item:

“Sec. 9512. Funding to Support Clean Communities Trust Fund.”.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect on January 1, 2024.

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