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Bioheat Blending Under a Reformed Biodiesel Tax Incentive
Senate Bill 1946 – The Tax Relief Extension Act of 2015

The U.S. biodiesel industry has invested millions of dollars and spent years helping to build the Bioheat market. The National Biodiesel Board would not support legislation that would hinder Bioheat blending. To the contrary, legislation to reform the biodiesel tax incentive to a domestic producer's credit, as recently passed by the Senate Finance Committee in the Tax Relief Extension Act of 2015 (S. 1946), will strengthen the Bioheat market by continuing to grow a stable, sustainable domestic biodiesel industry with strong production nationwide, including in the Northeast. We continue working with Congress on technical language to further strengthen and clarify the existing legislation. However, as it stands, the bill includes numerous provisions ensuring that the reformed tax incentive will continue supporting a healthy, growing U.S. Bioheat market. Following are some frequently asked questions regarding the change:

Is there enough domestic supply to fuel the Bioheat market? More than enough domestic capacity exists today to meet Bioheat demand. The U.S. biodiesel industry has installed capacity of more than 3 billion gallons, and domestic production was roughly half of that in 2014. This legislation will mobilize that excess capacity and grow the number of domestic biodiesel producers as well as their productivity. This will create a stable domestic industry with diversity and competition that continues building a healthy Bioheat market. Additionally, this reform would not block imported biodiesel from entering the U.S. market. In fact significant already subsidized imports would likely continue coming to the U.S. and would continue to receive credits under the Renewable Fuel Standard and California's Low Carbon Fuel Standard.

Does the value of the tax credit change under this reform? No. The \$1-per-gallon producer's credit would be negotiated and shared down the distribution chain just as it is as a blender's credit. While there would be new procedures and new point of taxation regarding payment of the \$0.244 excise tax, the reform includes a number of safeguards to prevent the excise tax from being assessed on Bioheat. The legislation's authors have no intent of imposing new burdens on Bioheat or other nontaxed use of biodiesel.

What does the legislation change with the excise tax? To clean up the tax code, the legislation's authors and the IRS want to align the point of taxation for claiming the \$1 per gallon tax credit with paying the \$0.244 excise tax. That is, the party claiming the tax credit would also pay the excise tax. This could be done at the producer level but also includes exemptions allowing it to continue at the blender level.

Does that mean the \$0.244 excise tax will be assessed on biodiesel used in heating oil and passed along to oilheat dealers? No. First, the legislation continues existing IRS "Tax It or Dye It" regulations under which dyed fuel to be used in off-road applications such as Bioheat is not subject to the excise tax.

To avoid incurring the excise tax, biodiesel producers or other discretionary blenders could dye their fuel and sell directly into the oilheat market.

What if I buy Bioheat from a large distributor/terminal operator? Additionally, the legislation gives biodiesel producers the option of allowing “eligible discretionary blenders” – those blending at least 10 million gallons of biodiesel annually – to take responsibility for both claiming the tax credit and paying the excise tax. This allows biodiesel producers to negotiate a transaction that shifts the point of taxation for the tax credit and the excise tax payment to an eligible blender. The eligible blender – large distributors and terminal operators would qualify for this designation – would then claim the \$1 per gallon tax incentive and not pay the \$0.244 excise tax on biodiesel sold into the Bioheat market. This continues strong biodiesel blending economics in which biodiesel – when the tax incentive is in place – should be available at a discount to petroleum diesel.

What if the excise tax is paid on biodiesel that’s eventually used in heating oil? Is there a refund process? Yes. In cases where biodiesel used in heating oil might be temporarily subject to the excise tax, Bioheat producers are already eligible for a quarterly refund on prepaid excise taxes by filing IRS Form 720. NBB is working with Congress on a technical correction to speed the refund to 20 days through a simple, quick-claim process for Bioheat and other blenders. Specifically, we have asked for the prepaid excise taxes on biodiesel to be subject to the quick-claim refund process already in the tax code under Section 6427 (l)(3)(b).

What are the benefits of a producer’s credit? Plenty! Reforming this tax credit would:

Stop Subsidizing Foreign Manufacturing: U.S. tax dollars and energy policy should be – and typically are – aimed at incentivizing domestic production, not foreign production. The structure of the biodiesel tax incentive as a blender’s credit increasingly allows foreign producers to access the credit if their fuel is blended in the U.S. Subsidizing foreign manufacturing is obviously not the intent of Congress, and we should close this loophole by reforming the credit as a domestic production credit. Importantly, this reform would not block imported biodiesel from entering the U.S. market, and in fact significant already subsidized imports would likely continue coming to the U.S. and would continue to receive incentives under the RFS and California’s Low Carbon Fuel Standard.

Save Taxpayers Dollars: Biodiesel imports to the U.S. have grown sharply in recent years, largely as a result of the tax credit. In 2013 and 2014 combined, the U.S. Treasury issued more than \$800 million in tax credits for imported biodiesel and renewable diesel. Much of this fuel often had already received subsidies in its home country. According to the Congressional Budget Office, this reform would save U.S. taxpayers \$90 million.

Mobilize Excess U.S. Capacity: There is more than enough U.S. production capacity to meet U.S. demand, and biodiesel producers across the country are waiting for the right policy signals to expand operations. With more than 3.1 billion gallons of installed capacity in 2014 and about 1.4 billion gallons of actual domestic production, the U.S. industry is more than capable of meeting robust requirements under the Renewable Fuel Standard (RFS). We estimate U.S. production would immediately rise by approximately 400 million gallons, creating thousands of jobs while strengthening U.S. energy security and improving refining capacity to prevent bottlenecks that result in price spikes.

Level the Playing Field: U.S. biodiesel producers need a level playing field to compete with foreign production. For example, since 2009, the European Union has levied duties on U.S. biodiesel that effectively block U.S. biodiesel from entering the European market. At the same time, U.S. policy is incentivizing European biodiesel shipments to the U.S. with the \$1-per-gallon credit. Additionally, Argentinian biodiesel that receives significant incentives under Argentina’s Differential Export Tax regime is increasingly being shipped to the U.S. market where it also receives the U.S. tax incentive. Without this reform, U.S. tax policy is increasingly contributing to U.S. companies losing U.S. market share to subsidized foreign production in Europe, Argentina and other nations.

Continue to Lower the Cost of Diesel Fuel: A production tax credit would be passed down through the biodiesel value chain throughout the distribution system, ultimately decreasing costs for retail consumers. Biodiesel producers and blenders already structure transactions with the value of the credit “baked into” the sale. The credit as reformed would have the same value as the historical “blender’s” credit, and blenders would continue to benefit.

Streamline IRS Administration and Reduce Potential for Tax Fraud: Today, thousands of “blenders” are registered to blend biodiesel and renewable diesel to produce transportation diesel fuel and Bioheat. It is difficult for the IRS to administer the credit and monitor compliance under this decentralized system. With fewer than 200 companies producing biodiesel and renewable diesel today, this reform would significantly streamline administration of the credit and avoid fraud or abuse by sharply narrowing the number of potential claimants for the credit.

Address International Trade Laws: The proposed reform is well within the parameters of established international trade accords. The limitation of tax benefits to activity within the U.S. has been a feature of numerous tax provisions, as well as recent proposals for new benefits, such as the Boustany-Neal Innovation Box and the recently introduced American Energy Innovation Act of 2015, where both the electricity and fuel sections contain a domestic production requirement.