

112TH CONGRESS  
1ST SESSION

# H. R. 2238

To amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2011

Mr. SCHOCK (for himself and Mr. PETERSON) 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, 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. 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, 2011.

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 amending subparagraph (B) of para-  
5           graph (7), as so redesignated to read as follows:

6                   “(B) any biodiesel (within the meaning of  
7                   section 40A) sold or used after December 31,  
8                   2014,”.

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

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

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

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

24                   “(f) RECAPTURE.—

25                   “(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, 2011.

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.

18 **SEC. 4. COMPREHENSIVE STUDY OF ENERGY TAX PREF-**  
19 **ERENCES FOR RENEWABLE ENERGY AND**  
20 **FOSSIL FUELS.**

21 Not later than June 30, 2015, the Comptroller Gen-  
22 eral of the United States (in consultation with the Sec-  
23 retary of Treasury, the Secretary of Agriculture, the Sec-  
24 retary of Energy, and the Administrator of the Environ-

1 mental Protection Agency) shall submit a written report  
2 to Congress which—

3 (1) identifies tax preferences available for re-  
4 newable fuels, renewable electricity generation, fossil  
5 transportation fuels, and electricity generation from  
6 fossil fuels,

7 (2) calculates the cumulative benefit of these  
8 tax preferences for the respective industries since en-  
9 actment of each of such tax preferences,

10 (3) determines the environmental costs, bene-  
11 fits, and efficiencies associated with fuel and elec-  
12 tricity production from renewables and fossil fuels,  
13 and

14 (4) determines the economic costs and benefits  
15 associated with the fuel and electricity production  
16 from renewables and fossil fuels.

○