

112TH CONGRESS
1ST SESSION

S. 1277

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

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2011

Ms. CANTWELL (for herself, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. BLUNT, Mr. HARKIN, Mrs. MURRAY, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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 2011”.

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 of 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 raw feedstock. For purposes of this
17 paragraph, the term ‘United States’ includes any
18 possession of the United States.

19 “(5) BIODIESEL TRANSFERS FROM AN IRS REG-
20 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
21 IRS REGISTERED TERMINAL OR REFINERY.—The
22 credit allowed under subsection (a) shall be allowed
23 to the terminal or refinery referred to in section
24 4081(a)(1)(B)(i) in instances where section
25 4081(a)(1)(B)(iii) is applicable. The credit allowed

1 under subsection (a) cannot be claimed by a ter-
2 minal or refinery on fuel upon which the credit was
3 previously claimed by a biodiesel producer.

4 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL
5 BIODIESEL PRODUCERS.—

6 “(1) ELIGIBLE SMALL BIODIESEL PRODUCER.—

7 The term ‘eligible small biodiesel producer’ means a
8 person who at all times during the taxable year has
9 a productive capacity for biodiesel not in excess of
10 60,000,000 gallons.

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

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

1 “(4) ALLOCATION.—For purposes of this sub-
2 section, in the case of a facility in which more than
3 1 person has an interest, productive capacity shall
4 be allocated among such persons in such manner as
5 the Secretary may prescribe.

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

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

13 “(B) to prevent any person from directly
14 or indirectly benefitting with respect to more
15 than 15,000,000 gallons during the taxable
16 year.

17 “(6) ALLOCATION OF SMALL BIODIESEL CREDIT
18 TO PATRONS OF COOPERATIVE.—

19 “(A) ELECTION TO ALLOCATE.—

20 “(i) IN GENERAL.—In the case of a
21 cooperative organization described in sec-
22 tion 1381(a), any portion of the increase
23 determined under subsection (b) for the
24 taxable year may, at the election of the or-
25 ganization, be apportioned pro rata among

1 patrons of the organization on the basis of
2 the quantity or value of business done with
3 or for such patrons for the taxable year.

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

14 “(B) TREATMENT OF ORGANIZATIONS AND
15 PATRONS.—

16 “(i) ORGANIZATIONS.—The amount of
17 the credit not apportioned to patrons pur-
18 suant to subparagraph (A) shall be in-
19 cluded in the amount determined under
20 subsection (b) for the taxable year of the
21 organization.

22 “(ii) PATRONS.—The amount of the
23 credit apportioned to patrons pursuant to
24 subparagraph (A) shall be included in the
25 amount determined under such subsection

1 for the first taxable year of each patron
2 ending on or after the last day of the pay-
3 ment period (as defined in section
4 1382(d)) for the taxable year of the orga-
5 nization or, if earlier, for the taxable year
6 of each patron ending on or after the date
7 on which the patron receives notice from
8 the cooperative of the apportionment.

9 “(iii) SPECIAL RULES FOR DECREASE
10 IN CREDITS FOR TAXABLE YEAR.—If the
11 amount of the credit of the organization
12 determined under such subsection for a
13 taxable year is less than the amount of
14 such credit shown on the return of the or-
15 ganization for such year, an amount equal
16 to the excess of—

17 “(I) such reduction, over

18 “(II) the amount not apportioned
19 to such patrons under subparagraph
20 (A) for the taxable year, shall be
21 treated as an increase in tax imposed
22 by this chapter on the organization.

23 Such increase shall not be treated as tax
24 imposed by this chapter for purposes of de-

1 termining the amount of any credit under
2 this chapter or for purposes of section 55.

3 “(f) RENEWABLE DIESEL.—For purposes of this
4 title—

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

8 “(2) RENEWABLE DIESEL DEFINED.—The term
9 ‘renewable diesel’ means liquid fuel derived from bio-
10 mass 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 of Testing and Materials D975 or D396,
17 or other equivalent standard approved by the
18 Secretary.

19 Such term shall not include any liquid with respect
20 to which a credit may be determined under section
21 40. Such term does not include any fuel derived
22 from coprocessing biomass with a feedstock which is
23 not biomass. For purposes of this paragraph, the
24 term ‘biomass’ has the meaning given such term by
25 section 45K(c)(3).

1 “(3) CERTAIN AVIATION FUEL.—Except as pro-
 2 vided in the last 3 sentences of paragraph (2), the
 3 term ‘renewable diesel’ shall include fuel derived
 4 from biomass which meets the requirements of a De-
 5 partment of Defense specification for military jet
 6 fuel or an American Society of Testing and Mate-
 7 rials specification for aviation turbine fuel.

8 “(g) TERMINATION.—This section shall not apply to
 9 any sale or use after December 31, 2014.”.

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

“Sec. 40A. Biodiesel production.”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to biodiesel sold or used after De-
 17 cember 31, 2011.

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

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

22 “(c) BIODIESEL CREDIT.—

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

1 “(A) is sold by such producer to another
2 person—

3 “(i) for use by such other person’s
4 trade or business (other than casual off-
5 farm production),

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

8 “(iii) who sells such biodiesel at retail
9 to another person and places such biodiesel
10 in the fuel tank of such other person, or

11 “(B) is used or sold by such producer for
12 any purpose described in subparagraph (A).

13 “(2) DEFINITIONS.—Any term used in this sub-
14 section which is also used in section 40A shall have
15 the meaning given such term by section 40A.

16 “(3) BIODIESEL TRANSFERS FROM AN IRS REG-
17 ISTERED BIODIESEL PRODUCTION FACILITY TO AN
18 IRS REGISTERED TERMINAL.—The credit allowed
19 under this subsection can be claimed by a registered
20 terminal or refinery in instances where section
21 4081(a)(1)(B)(iii) is applicable. The credit allowed
22 under this subsection cannot be claimed by a ter-
23 minal or refinery on fuel upon which the credit was
24 previously claimed by a biodiesel producer.

1 “(4) TERMINATION.—This subsection shall not
2 apply to any sale, use, or removal for any period
3 after December 31, 2014.”.

4 (b) PAYMENT OF CREDIT.—Subsection (e) of section
5 6427 of the Internal Revenue Code of 1986 is amended—

6 (1) by striking “or the biodiesel mixture credit”
7 in paragraph (1),

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

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

17 (3) by striking “paragraph (1) or (2)” each
18 place it appears in paragraphs (4) and (6), as redesi-
19 gnated by paragraph (2), and inserting “paragraph
20 (1), (2), or (3)”,

21 (4) by striking “alternative fuel” each place it
22 appears in paragraphs (4) and (6), as redesignated
23 by paragraph (2), and inserting “fuel”,

24 (5) by striking “biodiesel mixture (as defined in
25 section 6426(c)(3))” in paragraph (7)(B), as so re-

1 designated, and inserting “biodiesel (within the
2 meaning of section 40A)”, and

3 (6) by striking “2011” in paragraph (7)(B), as
4 so redesignated, and inserting “2014”.

5 (c) EXEMPTION FOR BIODIESEL TRANSFERRED
6 FROM A REGISTERED PRODUCER TO A REGISTERED TER-
7 MINAL.—Subparagraph (B) of section 4081(a)(1) of the
8 Internal Revenue Code of 1986 is amended—

9 (1) by striking “clause (ii)” in clause (i) and in-
10 sserting “clauses (ii) and (iii)”, and

11 (2) by adding at the end the following new
12 clause:

13 “(iii) EXEMPTIONS FOR BIODIESEL
14 TRANSFERRED FROM A REGISTERED PRO-
15 DUCER TO A REGISTERED TERMINAL.—
16 The tax imposed by this paragraph shall
17 not apply to any removal or entry of bio-
18 diesel (as defined in section 40A(d)(1))
19 transferred in bulk (without regard to the
20 manner of such transfer) to a terminal or
21 refinery if—

22 “(I) such biodiesel was produced
23 by a person who is registered under
24 section 4101 as a producer of bio-
25 diesel and who provides reporting

1 under the ExStars fuel reporting sys-
2 tem of the Internal Revenue Service,
3 and

4 “(II) the operator of such ter-
5 minal or refinery is registered under
6 section 4101.”.

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

12 (e) RECAPTURE.—Subsection (f) of section 6426 of
13 the Internal Revenue Code of 1986 is amended to read
14 as follows:

15 “(f) RECAPTURE.—

16 “(1) ALCOHOL FUEL MIXTURES.—If—

17 “(A) any credit was determined under this
18 section with respect to alcohol used in the pro-
19 duction of any alcohol fuel mixture, and

20 “(B) any person—

21 “(i) separates the alcohol from the
22 mixture, or

23 “(ii) without separation, uses the mix-
24 ture other than as a fuel,

1 then there is hereby imposed on such person a tax
2 equal to the product of the applicable amount and
3 the number of gallons of such alcohol.

4 “(2) BIODIESEL.—If any credit was determined
5 under this section with respect to the production of
6 any biodiesel and any person does not use such bio-
7 diesel for a purpose described in subsection (c)(1),
8 then there is hereby imposed on such person a tax
9 equal to \$1 for each gallon of such biodiesel.

10 “(3) APPLICABLE LAWS.—All provisions of law,
11 including penalties, shall, insofar as applicable and
12 not inconsistent with this section, apply in respect of
13 any tax imposed under paragraph (1) or (2) as if
14 such tax were imposed by section 4081 and not by
15 this section.”.

16 (f) CLERICAL AMENDMENTS.—

17 (1) The heading of section 6426 of the Internal
18 Revenue Code of 1986 is amended by striking “**AL-**
19 **COHOL FUEL, BIODIESEL, AND ALTERNATIVE**
20 **FUEL MIXTURES**” and inserting “**ALCOHOL FUEL**
21 **MIXTURES, BIODIESEL PRODUCTION, AND AL-**
22 **TERNATIVE FUEL MIXTURES**”.

23 (2) The item relating to section 6426 in the
24 table of sections for subchapter B of chapter 65 of
25 such Code is amended by striking “alcohol fuel, bio-

1 diesel, and alternative fuel mixtures” and inserting
2 “alcohol fuel mixtures, biodiesel production, and al-
3 ternative fuel mixtures”.

4 (g) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to biodiesel sold or used after De-
6 cember 31, 2011.

7 **SEC. 4. BIODIESEL TREATED AS TAXABLE FUEL.**

8 (a) BIODIESEL TREATED AS TAXABLE FUEL.—
9 Clause (i) of section 4083(a)(3)(A) of the Internal Rev-
10 enue Code of 1986 is amended by inserting “, including
11 biodiesel (as defined in section 6426(c)(3)),” after “(other
12 than gasoline)”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to biodiesel removed, entered, or
15 sold after the date which is 6 months after the date of
16 the enactment of this Act.

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