

109TH CONGRESS  
1ST SESSION

# H. R. 36

To amend the Internal Revenue Code of 1986 to provide for a small agri-biodiesel producer credit and to improve the small ethanol producer credit.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. KING of Iowa introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a small agri-biodiesel producer credit and to improve the small ethanol producer 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. SMALL AGRI-BIODIESEL PRODUCER CREDIT.**

4       (a) IN GENERAL.—Subsection (a) of section 40A of  
5 the Internal Revenue Code of 1986 is amended to read  
6 as follows:

7       “(a) GENERAL RULE.—For purposes of section 38,  
8 the biodiesel fuels credit determined under this section for  
9 the taxable year is an amount equal to the sum of—

10               “(1) the biodiesel mixture credit, plus

1 “(2) the biodiesel credit, plus

2 “(3) in the case of an eligible small agri-bio-  
3 diesel producer, the small agri-biodiesel producer  
4 credit.”.

5 (b) SMALL AGRI-BIODIESEL PRODUCER CREDIT DE-  
6 FINED.—Subsection (b) of section 40A of such Code is  
7 amended by adding at the end the following new para-  
8 graph:

9 “(5) SMALL AGRI-BIODIESEL PRODUCER CRED-  
10 IT.—

11 “(A) IN GENERAL.—The small agri-bio-  
12 diesel producer credit of any eligible small agri-  
13 biodiesel producer for any taxable year is 10  
14 cents for each gallon of qualified agri-biodiesel  
15 production of such producer.

16 “(B) QUALIFIED AGRI-BIODIESEL PRODUC-  
17 TION.—For purposes of this paragraph, the  
18 term ‘qualified agri-biodiesel production’ means  
19 any agri-biodiesel which is produced by an eligi-  
20 ble small agri-biodiesel producer, and which  
21 during the taxable year—

22 “(i) is sold by such producer to an-  
23 other person—

24 “(I) for use by such other person  
25 in the production of a qualified bio-

1 diesel mixture in such other person's  
 2 trade or business (other than casual  
 3 off-farm production),

4 “(II) for use by such other per-  
 5 son as a fuel in a trade or business,  
 6 or

7 “(III) who sells such agri-bio-  
 8 diesel at retail to another person and  
 9 places such agri-biodiesel in the fuel  
 10 tank of such other person, or

11 “(ii) is used or sold by such producer  
 12 for any purpose described in clause (i).

13 “(C) LIMITATION.— The qualified agri-  
 14 biodiesel production of any producer for any  
 15 taxable year shall not exceed 15,000,000 gal-  
 16 lons.”.

17 (e) DEFINITIONS AND SPECIAL RULES.—Section  
 18 40A of such Code is amended by redesignating subsection  
 19 (e) as subsection (f) and by inserting after subsection (d)  
 20 the following new subsection:

21 “(e) DEFINITIONS AND SPECIAL RULES FOR SMALL  
 22 AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of  
 23 this section—

24 “(1) ELIGIBLE SMALL AGRI-BIODIESEL PRO-  
 25 DUCER.—The term ‘eligible small agri-biodiesel pro-

1 ducer' means a person who, at all times during the  
2 taxable year, has a productive capacity for agri-bio-  
3 diesel not in excess of 60,000,000 gallons.

4 “(2) AGGREGATION RULE.—For purposes of  
5 the 15,000,000 gallon limitation under subsection  
6 (b)(5)(C) and the 60,000,000 gallon limitation  
7 under paragraph (1), all members of the same con-  
8 trolled group of corporations (within the meaning of  
9 section 267(f)) and all persons under common con-  
10 trol (within the meaning of section 52(b) but deter-  
11 mined by treating an interest of more than 50 per-  
12 cent as a controlling interest) shall be treated as 1  
13 person.

14 “(3) PARTNERSHIP, S CORPORATIONS, AND  
15 OTHER PASS-THRU ENTITIES.—In the case of a  
16 partnership, trust, S corporation, or other pass-thru  
17 entity, the limitations contained in subsection  
18 (b)(5)(C) and paragraph (1) shall be applied at the  
19 entity level and at the partner or similar level.

20 “(4) ALLOCATION.—For purposes of this sub-  
21 section, in the case of a facility in which more than  
22 1 person has an interest, productive capacity shall  
23 be allocated among such persons in such manner as  
24 the Secretary may prescribe.

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

3           “(A) to prevent the credit provided for in  
4       subsection (a)(3) from directly or indirectly  
5       benefiting any person with a direct or indirect  
6       productive capacity of more than 60,000,000  
7       gallons of agri-biodiesel during the taxable year,  
8       or

9           “(B) to prevent any person from directly  
10       or indirectly benefiting with respect to more  
11       than 15,000,000 gallons during the taxable  
12       year.

13           “(6) ALLOCATION OF SMALL AGRI-BIODIESEL  
14       CREDIT TO PATRONS OF COOPERATIVE.—

15           “(A) ELECTION TO ALLOCATE.—

16           “(i) IN GENERAL.— In the case of a  
17       cooperative organization described in sec-  
18       tion 1381(a), any portion of the credit de-  
19       termined under subsection (a)(3) for the  
20       taxable year may, at the election of the or-  
21       ganization, be apportioned pro rata among  
22       patrons of the organization on the basis of  
23       the quantity or value of business done with  
24       or for such patrons for the taxable year.

1           “(ii) FORM AND EFFECT OF ELEC-  
2           TION.—An election under clause (i) for any  
3           taxable year shall be made on a timely  
4           filed return for such year. Such election,  
5           once made, shall be irrevocable for such  
6           taxable year.

7           “(B) TREATMENT OF ORGANIZATIONS AND  
8           PATRONS.—

9           “(i) ORGANIZATIONS.— The amount  
10          of the credit not apportioned to patrons  
11          pursuant to subparagraph (A) shall be in-  
12          cluded in the amount determined under  
13          subsection (a)(3) for the taxable year of  
14          the organization.

15          “(ii) PATRONS.—The amount of the  
16          credit apportioned to patrons pursuant to  
17          subparagraph (A) shall be included in the  
18          amount determined under such subsection  
19          for the first taxable year of each patron  
20          ending on or after the last day of the pay-  
21          ment period (as defined in section  
22          1382(d)) for the taxable year of the orga-  
23          nization or, if earlier, for the taxable year  
24          of each patron ending on or after the date

1 on which the patron receives notice from  
2 the cooperative of the apportionment.

3 “(iii) SPECIAL RULES FOR DECREASE  
4 IN CREDITS FOR TAXABLE YEAR.—If the  
5 amount of the credit of the organization  
6 determined under such subsection for a  
7 taxable year is less than the amount of  
8 such credit shown on the return of the or-  
9 ganization for such year, an amount equal  
10 to the excess of—

11 “(I) such reduction, over  
12 “(II) the amount not apportioned  
13 to such patrons under subparagraph  
14 (A) for the taxable year,  
15 shall be treated as an increase in tax im-  
16 posed by this chapter on the organization.  
17 Such increase shall not be treated as tax  
18 imposed by this chapter for purposes of de-  
19 termining the amount of any credit under  
20 this chapter or for purposes of section  
21 55.”.

22 (d) SMALL AGRI-BIODIESEL CREDIT NOT A PASSIVE  
23 ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) of  
24 such Code, as amended by section 2, is further amended

1 by striking “section 40(a)(3)” and inserting “sections  
2 40(a)(3) and 40A(a)(3)”.

3 (e) SMALL AGRI-BIODIESEL PRODUCER CREDIT NOT  
4 ADDED BACK TO INCOME UNDER SECTION 87.—Section  
5 87 of such Code, as amended by section 2, is further  
6 amended by striking “and” at the end of paragraph (2)  
7 and by striking paragraph (3) and inserting the following  
8 new paragraphs:

9 “(3) the biodiesel mixture credit determined  
10 with respect to the taxpayer for the taxable year  
11 under section 40A(a)(1), and

12 “(4) the biodiesel credit determined with re-  
13 spect to the taxpayer for the taxable year under sec-  
14 tion 40A(a)(2).”.

15 (f) CONFORMING AMENDMENTS.—

16 (1) Paragraph (4) of section 40A(b) of such  
17 Code is amended by striking “this section” and in-  
18 serting “paragraph (1) or (2) of subsection (a)”.

19 (2) The heading of subsection (b) of section  
20 40A of such Code is amended by striking “AND BIO-  
21 DIESEL CREDIT” and inserting “, BIODIESEL CRED-  
22 IT, AND SMALL AGRI-BIODIESEL PRODUCER CRED-  
23 IT”.

24 (3) Paragraph (3) of section 40A(d) of such  
25 Code is amended by redesignating subparagraph (C)

1 as subparagraph (D) and by inserting after subpara-  
 2 graph (B) the following new subparagraph:

3 “(C) PRODUCER CREDIT.—If—

4 “(i) any credit was determined under  
 5 subsection (a)(3), and

6 “(ii) any person does not use such  
 7 fuel for a purpose described in subsection  
 8 (b)(5)(B),

9 then there is hereby imposed on such person a  
 10 tax equal to 10 cents a gallon for each gallon  
 11 of such agri-biodiesel.”.

12 (g) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to taxable years beginning after  
 14 the date of the enactment of this Act.

15 **SEC. 2. IMPROVEMENTS TO SMALL ETHANOL PRODUCER**  
 16 **CREDIT AND SMALL AGRIBIODIESEL PRO-**  
 17 **DUCER CREDIT.**

18 (a) DEFINITION OF SMALL ETHANOL PRODUCER.—  
 19 Section 40(g) of the Internal Revenue Code of 1986 (relat-  
 20 ing to definitions and special rules for eligible small eth-  
 21 anol producer credit) is amended by striking  
 22 “30,000,000” each place it appears and inserting  
 23 “60,000,000”.

24 (b) SMALL ETHANOL PRODUCER CREDIT NOT A PAS-  
 25 SIVE ACTIVITY CREDIT.—Clause (i) of section

1 469(d)(2)(A) of such Code is amended by striking “sub-  
2 part D” and inserting “subpart D, other than section  
3 40(a)(3),”.

4 (c) SMALL ETHANOL PRODUCER CREDIT NOT  
5 ADDED BACK TO INCOME UNDER SECTION 87.—Section  
6 87 of such Code (relating to income inclusion of alcohol  
7 fuel credit) is amended to read as follows:

8 **“SEC. 87. ALCOHOL FUEL CREDIT.**

9 “Gross income includes—

10 “(1) the amount of the alcohol mixture credit  
11 determined with respect to the taxpayer for the tax-  
12 able year under section 40(a)(1),

13 “(2) the alcohol credit determined with respect  
14 to the taxpayer for the taxable year under section  
15 40(a)(2), and

16 “(3) the biodiesel fuels credit determined with  
17 respect to the taxpayer for the taxable year under  
18 section 40A(a).”.

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 the date of the enactment of this Act.

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