

107TH CONGRESS  
1ST SESSION

# H. R. 1636

To amend the Internal Revenue Code of 1986 to allow allocation of small ethanol producer credit to patrons of cooperative, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2001

Mr. THUNE (for himself, Mr. POMEROY, Mrs. EMERSON, Mr. JOHNSON of Illinois, Mr. KENNEDY of Minnesota, Mr. GRAVES, Mr. SHIMKUS, Mrs. CLAYTON, and Mr. MORAN of Kansas) 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 allow allocation of small ethanol producer credit to patrons of cooperative, 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. SMALL ETHANOL PRODUCER CREDIT.**

4 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO  
5 PATRONS OF A COOPERATIVE.—Section 40(g) Internal  
6 Revenue Code of 1986 (relating to definitions and special  
7 rules for eligible small ethanol producer credit) is amended  
8 by adding at the end the following:

1           “(6) ALLOCATION OF SMALL ETHANOL PRO-  
2           DUCER CREDIT TO PATRONS OF COOPERATIVE.—

3           “(A) ELECTION TO ALLOCATE.—

4           “(i) IN GENERAL.—Notwithstanding  
5           paragraph (4), in the case of a cooperative  
6           organization described in section 1381(a),  
7           any portion of the credit determined under  
8           subsection (a)(3) for the taxable year may,  
9           at the election of the organization, be ap-  
10          portioned pro rata among patrons of the  
11          organization on the basis of the quantity  
12          or value of business done with or for such  
13          patrons for the taxable year.

14          “(ii) FORM AND EFFECT OF ELEC-  
15          TION.—An election under clause (i) for any  
16          taxable year shall be made on a timely  
17          filed return for such year. Such election,  
18          once made, shall be irrevocable for such  
19          taxable year.

20          “(iii) SPECIAL RULE FOR TAXABLE  
21          YEARS PRIOR TO ENACTMENT OF PARA-  
22          GRAPH.—Notwithstanding clause (ii), an  
23          election for any taxable year ending prior  
24          to the date of the enactment of this para-  
25          graph may be made at any time before the

1 expiration of the 3-year period beginning  
2 on the last date prescribed by law for filing  
3 the return of the taxpayer for such taxable  
4 year (determined without regard to exten-  
5 sions) by filing an amended return for  
6 such year.

7 “(B) TREATMENT OF ORGANIZATIONS AND  
8 PATRONS.—The amount of the credit appor-  
9 tioned to patrons under subparagraph (A)—

10 “(i) shall not be included in the  
11 amount determined under subsection (a)  
12 with respect to the organization for the  
13 taxable year,

14 “(ii) shall be included in the amount  
15 determined under subsection (a) for the  
16 taxable year of each patron for which the  
17 patronage dividends for the taxable year  
18 described in subparagraph (A) are included  
19 in gross income, and

20 “(iii) shall be included in gross income  
21 of such patrons for the taxable year in the  
22 manner and to the extent provided in sec-  
23 tion 87.

24 “(C) SPECIAL RULES FOR DECREASE IN  
25 CREDITS FOR TAXABLE YEAR.—If the amount

1 of the credit of a cooperative organization (as  
2 so defined) determined under subsection (a)(3)  
3 for a taxable year is less than the amount of  
4 such credit shown on the return of the coopera-  
5 tive organization for such year, an amount  
6 equal to the excess of—

7 “(i) such reduction, over

8 “(ii) the amount not apportioned to  
9 such patrons under subparagraph (A) for  
10 the taxable year,

11 shall be treated as an increase in tax imposed  
12 by this chapter on the organization. Such in-  
13 crease shall not be treated as tax imposed by  
14 this chapter for purposes of determining the  
15 amount of any credit under this subpart or sub-  
16 part A, B, E, or G.”.

17 (b) DEFINITION OF SMALL ETHANOL PRODUCER;  
18 IMPROVEMENTS TO SMALL ETHANOL PRODUCER  
19 CREDIT.—

20 (1) DEFINITION OF SMALL ETHANOL PRO-  
21 DUCER.—Section 40(g)(1) of the Internal Revenue  
22 Code of 1986 (relating to eligible small ethanol pro-  
23 ducer) is amended by striking “30,000,000” and in-  
24 serting “60,000,000”.

1           (2) SMALL ETHANOL PRODUCER CREDIT NOT A  
2 PASSIVE ACTIVITY CREDIT.—Clause (i) of section  
3 469(d)(2)(A) of such Code (relating to passive activ-  
4 ity credit) is amended by striking “subpart D” and  
5 inserting “subpart D, other than section 40(a)(3),”.

6           (3) ALLOWING CREDIT AGAINST MINIMUM  
7 TAX.—

8           (A) IN GENERAL.—Subsection (e) of sec-  
9 tion 38 of such Code (relating to limitation  
10 based on amount of tax) is amended by redesignig-  
11 nating paragraph (3) as paragraph (4) and by  
12 inserting after paragraph (2) the following:

13           “(3) SPECIAL RULES FOR SMALL ETHANOL  
14 PRODUCER CREDIT.—

15           “(A) IN GENERAL.—In the case of the  
16 small ethanol producer credit—

17           “(i) this section and section 39 shall  
18 be applied separately with respect to the  
19 credit, and

20           “(ii) in applying paragraph (1) to the  
21 credit—

22           “(I) subparagraphs (A) and (B)  
23 thereof shall not apply, and

24           “(II) the limitation under para-  
25 graph (1) (as modified by subclause

1 (I) shall be reduced by the credit al-  
2 lowed under subsection (a) for the  
3 taxable year (other than the small  
4 ethanol producer credit).

5 “(B) SMALL ETHANOL PRODUCER CRED-  
6 IT.—For purposes of this subsection, the term  
7 ‘small ethanol producer credit’ means the credit  
8 allowable under subsection (a) by reason of sec-  
9 tion 40(a)(3).”.

10 (B) CONFORMING AMENDMENT.—Sub-  
11 clause (II) of section 38(c)(2)(A)(ii) of such  
12 Code is amended by inserting “or the small eth-  
13 anol producer credit” after “employment  
14 credit”.

15 (4) SMALL ETHANOL PRODUCER CREDIT NOT  
16 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-  
17 tion 87 of such Code (relating to income inclusion  
18 of alcohol fuel credit is amended to read as follows:

19 **“SEC. 87. ALCOHOL FUEL CREDIT.**

20 “Gross income includes an amount equal to the sum  
21 of—

22 “(1) the amount of the alcohol mixture credit  
23 determined with respect to the taxpayer for the tax-  
24 able year under section 40(a)(1), and

1           “(2) the alcohol credit determined with respect  
2           to the taxpayer for the taxable year under section  
3           40(a)(2).”.

4           (c) CONFORMING AMENDMENT.—Section 1388 of the  
5 Internal Revenue Code of 1986 (relating to definitions and  
6 special rules for cooperative organizations) is amended by  
7 adding at the end the following:

8           “(k) CROSS REFERENCE.—For provisions relating to  
9 the apportionment of the alcohol fuels credit between coop-  
10 erative organizations and their patrons, see section 40(d)  
11 (6).”

12          (d) EFFECTIVE DATES.—

13           (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the amendments made by this section  
15 shall apply to taxable years beginning after Decem-  
16 ber 31, 1997.

17           (2) CERTAIN PROVISIONS.—The amendments  
18 made by paragraphs (1) and (4) of subsection (b)  
19 shall apply to taxable years ending after the date of  
20 the enactment of this Act.

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