

107TH CONGRESS  
2D SESSION

# H. R. 4843

To amend the Internal Revenue Code of 1986 to provide tax incentives  
for the use of biodiesel as a fuel.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2002

Mr. HULSHOF (for himself, Mr. POMEROY, Mr. KENNEDY of Minnesota, Mr. NUSSLE, Mr. TANNER, Mr. WELLER, Mr. PETERSON of Minnesota, Mr. LEWIS of Kentucky, Mr. GRAVES, Mrs. EMERSON, Mr. GANSKE, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide  
tax incentives for the use of biodiesel as a fuel.

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. INCENTIVES FOR BIODIESEL.**

4 (a) CREDIT FOR BIODIESEL USED AS A FUEL.—

5 (1) IN GENERAL.—Subpart D of part IV of  
6 subchapter A of chapter 1 of the Internal Revenue  
7 Code of 1986 (relating to business related credits) is

1 amended by inserting after section 40 the following  
2 new section:

3 **“SEC. 40A. BIODIESEL USED AS FUEL.**

4 “(a) GENERAL RULE.—For purposes of section 38,  
5 the biodiesel fuels credit determined under this section for  
6 the taxable year is an amount equal to the biodiesel mix-  
7 ture credit.

8 “(b) DEFINITION OF BIODIESEL MIXTURE CRED-  
9 IT.—For purposes of this section—

10 “(1) BIODIESEL MIXTURE CREDIT.—

11 “(A) IN GENERAL.—The biodiesel mixture  
12 credit of any taxpayer for any taxable year is  
13 an amount equal to the biodiesel mixture rate  
14 for each gallon of biodiesel used by the taxpayer  
15 in the production of a qualified biodiesel mix-  
16 ture.

17 “(B) BIODIESEL MIXTURE RATE.—For  
18 purposes of subparagraph (A), the biodiesel  
19 mixture rate is 1 cent for each whole percent-  
20 age point (not exceeding 20 percentage points)  
21 of biodiesel in the mixture.

22 “(2) QUALIFIED BIODIESEL MIXTURE.—

23 “(A) IN GENERAL.—The term ‘qualified  
24 biodiesel mixture’ means a mixture of diesel  
25 and biodiesel which—

1           “(i) is sold by the taxpayer producing  
2           such mixture to any person for use as a  
3           fuel, or

4           “(ii) is used as a fuel by the taxpayer  
5           producing such mixture.

6           “(B) SALE OR USE MUST BE IN TRADE OR  
7           BUSINESS, ETC.—

8           “(i) IN GENERAL.—Biodiesel used in  
9           the production of a qualified biodiesel mix-  
10          ture shall be taken into account—

11           “(I) only if the sale or use de-  
12           scribed in subparagraph (A) is in a  
13           trade or business of the taxpayer, and

14           “(II) for the taxable year in  
15           which such sale or use occurs.

16           “(ii) CERTIFICATION FOR BIO-  
17           DIESEL.—Biodiesel used in the production  
18           of a qualified biodiesel mixture shall be  
19           taken into account only if the taxpayer de-  
20           scribed in subparagraph (A) obtains a cer-  
21           tification from the producer of the bio-  
22           diesel which identifies the product pro-  
23           duced.

24           “(C) CASUAL OFF-FARM PRODUCTION NOT  
25           ELIGIBLE.—No credit shall be allowed under

1           this section with respect to any casual off-farm  
2           production of a qualified biodiesel mixture.

3           “(c) COORDINATION WITH EXEMPTION FROM EX-  
4   CISE TAX.—The amount of the credit determined under  
5   this section with respect to any biodiesel shall, under regu-  
6   lations prescribed by the Secretary, be properly reduced  
7   to take into account any benefit provided with respect to  
8   such biodiesel solely by reason of the application of section  
9   4041(n) or section 4081(f).

10          “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
11   poses of this section—

12           “(1) BIODIESEL DEFINED.—The term ‘bio-  
13   diesel’ means the monoalkyl esters of long chain  
14   fatty acids derived solely from virgin vegetable oils  
15   for use in compressional-ignition (diesel) engines.  
16   Such term shall include esters derived from vege-  
17   table oils from corn, soybeans, sunflower seeds, cot-  
18   tonseeds, canola, crambe, rapeseeds, safflowers,  
19   flaxseeds, rice bran, and mustard seeds.

20           “(2) REGISTRATION REQUIREMENTS.—The  
21   term ‘biodiesel’ shall only include a biodiesel which  
22   meets—

23           “(A) the registration requirements for  
24   fuels and fuel additives established by the Envi-

1           ronmental Protection Agency under section 211  
2           of the Clean Air Act (42 U.S.C. 7545), and

3                   “(B) the requirements of the American So-  
4           ciety of Testing and Materials D6751.

5           “(3) BIODIESEL MIXTURE NOT USED AS A  
6           FUEL, ETC.—

7                   “(A) IMPOSITION OF TAX.—If—

8                           “(i) any credit was determined under  
9                           this section with respect to biodiesel used  
10                          in the production of any qualified biodiesel  
11                          mixture, and

12                                  “(ii) any person—

13    “(I) separates such biodiesel  
14    from the mixture, or

15    “(II) without separation, uses the  
16    mixture other than as a fuel,

17    then there is hereby imposed on such per-  
18    son a tax equal to the product of the bio-  
19    diesel mixture rate applicable under sub-  
20    section (b)(1)(B) and the number of gal-  
21    lons of the mixture.

22                                  “(B) APPLICABLE LAWS.—All provisions of  
23                                  law, including penalties, shall, insofar as appli-  
24                                  cable and not inconsistent with this section,  
25                                  apply in respect of any tax imposed under sub-

1 paragraph (A) as if such tax were imposed by  
2 section 4081 and not by this chapter.

3 “(4) 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 “(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT  
8 NOT APPLY.—

9 “(1) IN GENERAL.—A taxpayer may elect to  
10 have this section not apply for any taxable year.

11 “(2) TIME FOR MAKING ELECTION.—An elec-  
12 tion under paragraph (1) for any taxable year may  
13 be made (or revoked) at any time before the expira-  
14 tion of the 3-year period beginning on the last date  
15 prescribed by law for filing the return for such tax-  
16 able year (determined without regard to exten-  
17 sions).”

18 (2) CREDIT TREATED AS PART OF GENERAL  
19 BUSINESS CREDIT.—Section 38(b) of such Code is  
20 amended by redesignating paragraphs (4) through  
21 (15) as paragraphs (5) through (16), respectively,  
22 and by inserting after paragraph (3) the following  
23 new paragraph:

24 “(4) the biodiesel fuels credit determined under  
25 section 40A(a),”.

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 39(d) of such Code is amended  
3 by adding at the end the following new para-  
4 graph:

5 “(11) NO CARRYBACK OF BIODIESEL FUELS  
6 CREDIT BEFORE JANUARY 1, 2003.—No portion of  
7 the unused business credit for any taxable year  
8 which is attributable to the biodiesel fuels credit de-  
9 termined under section 40A may be carried back to  
10 a taxable year beginning before January 1, 2003.”.

11 (B) Section 196(e) of such Code is amend-  
12 ed by redesignating paragraphs (4) through  
13 (10) as paragraphs (5) through (11), respec-  
14 tively, and by inserting after paragraph (3) the  
15 following new paragraph:

16 “(4) the biodiesel fuels credit determined under  
17 section 40A(a),”.

18 (C) Section 6501(m) of such Code is  
19 amended by inserting “40A(e),” after “40(f),”.

20 (D) The table of sections for subpart D of  
21 part IV of subchapter A of chapter 1 of such  
22 Code is amended by inserting after the item re-  
23 lating to section 40 the following new item:

“Sec. 40A. Biodiesel used as fuel.”.

1           (4) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall apply to taxable years begin-  
3           ning after December 31, 2002.

4           (b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON  
5 BIODIESEL MIXTURES.—

6           (1) IN GENERAL.—Section 4081 of such Code  
7           (relating to manufacturers tax on petroleum prod-  
8           ucts) is amended by adding at the end the following  
9           new subsection:

10          “(f) BIODIESEL MIXTURES.—Under regulations pre-  
11 scribed by the Secretary—

12           “(1) IN GENERAL.—In the case of the removal  
13           or entry of a qualified biodiesel mixture, the rate of  
14           tax under subsection (a) shall be the otherwise appli-  
15           cable rate reduced by the biodiesel mixture rate (if  
16           any) applicable to the mixture.

17           “(2) TAX PRIOR TO MIXING.—In the case of the  
18           removal or entry of diesel fuel for use in producing  
19           at the time of such removal or entry a qualified bio-  
20           diesel mixture, the rate of tax under subsection (a)  
21           shall be the rate determined under paragraph (1),  
22           divided by a percentage equal to 100 percent minus  
23           the percentage of biodiesel which will be in the mix-  
24           ture.



1           “(3) DEFINITIONS.—For purposes of this sub-  
2           section, any term used in this subsection which is  
3           also used in section 40A shall have the meaning  
4           given such term by section 40A.

5           “(4) CERTAIN RULES TO APPLY.—Rules similar  
6           to the rules of paragraphs (6) and (7) of subsection  
7           (c) shall apply for purposes of this subsection.”.

8           (2) CONFORMING AMENDMENTS.—

9           (A) Section 4041 of such Code is amended  
10           by adding at the end the following new sub-  
11           section:

12           “(n) BIODIESEL MIXTURES.—Under regulations pre-  
13           scribed by the Secretary, in the case of the sale or use  
14           of a qualified biodiesel mixture (as defined in section  
15           40A(b)(2)), the rates under paragraphs (1) and (2) of  
16           subsection (a) shall be the otherwise applicable rates, re-  
17           duced by any applicable biodiesel mixture rate (as defined  
18           in section 40A(b)(1)(B)).”.

19           (B) Section 6427 of such Code is amended  
20           by redesignating subsection (p) as subsection  
21           (q) and by inserting after subsection (o) the fol-  
22           lowing new subsection:

23           “(p) BIODIESEL MIXTURES.—Except as provided in  
24           subsection (k), if any diesel fuel on which tax was imposed  
25           by section 4081 at a rate not determined under section

1 4081(f) is used by any person in producing a qualified  
2 biodiesel mixture (as defined in section 40A(b)(2)) which  
3 is sold or used in such person's trade or business, the Sec-  
4 retary shall pay (without interest) to such person an  
5 amount equal to the per gallon applicable biodiesel mix-  
6 ture rate (as defined in section 40A(b)(1)(B)) with respect  
7 to such fuel.”.

8           (3) EFFECTIVE DATE.—The amendments made  
9       by this subsection shall apply to any fuel sold after  
10       December 31, 2002.

11       (c) HIGHWAY TRUST FUND HELD HARMLESS.—  
12 There are hereby transferred (from time to time) from the  
13 funds of the Commodity Credit Corporation amounts de-  
14 termined by the Secretary of the Treasury to be equivalent  
15 to the reductions that would occur (but for this sub-  
16 section) in the receipts of the Highway Trust Fund by  
17 reason of the amendments made by this section.

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