

108TH CONGRESS
2D SESSION

H. R. 4165

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2004

Mr. SMITH of Michigan 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 provide
tax incentives to encourage the use of biodiesel as 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.—Sub-
5 part D of part IV of subchapter A of chapter 1 of the
6 Internal Revenue Code of 1986 (relating to business re-
7 lated credits) is amended by inserting after section 40 the
8 following new section:

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

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

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

8 “(1) BIODIESEL MIXTURE CREDIT.—

9 “(A) IN GENERAL.—The biodiesel mixture
10 credit of any taxpayer for any taxable year is
11 the sum of the products of the biodiesel mixture
12 rate for each qualified biodiesel mixture and the
13 number of gallons of such mixture of the tax-
14 payer for the taxable year.

15 “(B) BIODIESEL MIXTURE RATE.—For
16 purposes of subparagraph (A), the biodiesel
17 mixture rate for each qualified biodiesel mixture
18 shall be—

19 “(i) in the case of a mixture with only
20 biodiesel V, 1 cent for each whole percent-
21 age point (not exceeding 10 percentage
22 points) of biodiesel V in such mixture, and

23 “(ii) in the case of a mixture with bio-
24 diesel NV, or a combination of biodiesel V
25 and biodiesel NV, 0.5 cent for each whole
26 percentage point (not exceeding 10 per-

1 centage points) of such biodiesel in such
2 mixture.

3 “(2) QUALIFIED BIODIESEL MIXTURE.—

4 “(A) IN GENERAL.—The term ‘qualified
5 biodiesel mixture’ means a mixture of diesel
6 and biodiesel V or biodiesel NV which—

7 “(i) is sold by the taxpayer producing
8 such mixture to any person for use as a
9 fuel, or

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

12 “(B) SALE OR USE MUST BE IN TRADE OR
13 BUSINESS, IN OFF-HIGHWAY USE, ETC.—

14 “(i) IN GENERAL.—Biodiesel V or bio-
15 diesel NV used in the production of a
16 qualified biodiesel mixture shall be taken
17 into account—

18 “(I) only if the sale or use de-
19 scribed in subparagraph (A) is in a
20 trade or business of the taxpayer,

21 “(II) for the taxable year in
22 which such sale or use occurs, and

23 “(III) only if the sale or use de-
24 scribed in subparagraph (A) is ulti-
25 mately for use in a vehicle which at

1 the time of use will not be registered
2 and is not required to be registered
3 for highway use under the laws of any
4 State or foreign country.

5 “(ii) CERTIFICATION FOR BIODIESEL
6 v.—Biodiesel V used in the production of
7 a qualified biodiesel mixture shall be taken
8 into account only if the taxpayer described
9 in subparagraph (A) obtains a certification
10 from the producer of the biodiesel V which
11 identifies the product produced.

12 “(C) CASUAL OFF-FARM PRODUCTION NOT
13 ELIGIBLE.—No credit shall be allowed under
14 this section with respect to any casual off-farm
15 production of a qualified biodiesel mixture.

16 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
17 poses of this section—

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

1 “(2) BIODIESEL NV DEFINED.—The term ‘bio-
2 diesel nv’ means the monoalkyl esters of long chain
3 fatty acids derived from nonvirgin vegetable oils or
4 animal fats for use in compressional-ignition (diesel)
5 engines.

6 “(3) REGISTRATION REQUIREMENTS.—The
7 terms ‘biodiesel V’ and ‘biodiesel NV’ shall only in-
8 clude a biodiesel which meets—

9 “(A) the registration requirements for
10 fuels and fuel additives established by the
11 Environmental Protection Agency under
12 section 211 of the Clean Air Act (42
13 U.S.C. 7545), and

14 “(B) the requirements of the Amer-
15 ican Society of Testing and Materials
16 D6751.

17 “(4) BIODIESEL MIXTURE NOT USED AS A
18 FUEL, ETC.—

19 “(A) IMPOSITION OF TAX.—If—

20 “(i) any credit was determined under
21 this section with respect to biodiesel V or
22 biodiesel NV used in the production of any
23 qualified biodiesel mixture, and

24 “(ii) any person—

1 “(I) separates such biodiesel
2 from the mixture, or

3 “(II) without separation, uses the
4 mixture other than as a fuel,

5 then there is hereby imposed on such per-
6 son a tax equal to the product of the bio-
7 diesel mixture rate applicable under sub-
8 section (b)(1)(B) and the number of gal-
9 lons of the mixture.

10 “(B) APPLICABLE LAWS.—All provisions of
11 law, including penalties, shall, insofar as appli-
12 cable and not inconsistent with this section,
13 apply in respect of any tax imposed under sub-
14 paragraph (A) as if such tax were imposed by
15 section 4081 and not by this chapter.

16 “(5) PASS-THRU IN THE CASE OF ESTATES AND
17 TRUSTS.—Under regulations prescribed by the Sec-
18 retary, rules similar to the rules of subsection (d) of
19 section 52 shall apply.

20 “(d) ELECTION TO HAVE BIODIESEL FUELS CREDIT
21 NOT APPLY.—

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

24 “(2) TIME FOR MAKING ELECTION.—An elec-
25 tion under paragraph (1) for any taxable year may

1 be made (or revoked) at any time before the expira-
 2 tion of the 3-year period beginning on the last date
 3 prescribed by law for filing the return for such tax-
 4 able year (determined without regard to extensions).

5 “(3) MANNER OF MAKING ELECTION.—An elec-
 6 tion under paragraph (1) (or revocation thereof)
 7 shall be made in such manner as the Secretary may
 8 by regulations prescribe.”.

9 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
 10 NESS CREDIT.—Section 38(b) of such Code is amended
 11 by striking “plus” at the end of paragraph (14), by strik-
 12 ing the period at the end of paragraph (15) and inserting
 13 “, plus”, and by adding at the end the following new para-
 14 graph:

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

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 39(d) of such Code is amended by
 19 adding at the end the following new paragraph:

20 “(11) NO CARRYBACK OF BIODIESEL FUELS
 21 CREDIT BEFORE JANUARY 1, 2004.—No portion of
 22 the unused business credit for any taxable year
 23 which is attributable to the biodiesel fuels credit de-
 24 termined under section 40A may be carried back to
 25 a taxable year beginning before January 1, 2004.”.

1 (2) Section 196(c) of such Code is amended by
2 striking “and” at the end of paragraph (9), by strik-
3 ing the period at the end of paragraph (10), and by
4 adding at the end the following new paragraph:

5 “(11) the biodiesel fuels credit determined
6 under section 40A(a).”.

7 (3) Section 6501(m) of such Code is amended
8 by inserting “40A(e),” after “40(f),”.

9 (4) The table of sections for subpart D of part
10 IV of subchapter A of chapter 1 of such Code is
11 amended by adding after the item relating to section
12 40 the following new item:

 “Sec. 40A. Biodiesel used as fuel.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this subsection shall apply to taxable years beginning after
15 December 31, 2003.

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