

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

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

“(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

“(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

“(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (b) for the taxable year of the organization.

“(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the 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 reded-  
19      ignated 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 serting “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.

○