

115TH CONGRESS  
1ST SESSION

# S. 944

To amend the Internal Revenue Code of 1986 to reform and extend the incentives for biodiesel.

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## IN THE SENATE OF THE UNITED STATES

APRIL 26, 2017

Mr. GRASSLEY (for himself, Ms. CANTWELL, Mr. ROBERTS, Ms. HIRONO, Mr. BLUNT, Mr. WHITEHOUSE, Mrs. ERNST, Ms. HEITKAMP, Mr. THUNE, Mr. UDALL, Mr. HEINRICH, Mrs. SHAHEEN, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. DONNELLY, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to reform and extend the incentives for 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 “American Renewable  
5 Fuel and Job Creation Act of 2017”.

6 **SEC. 2. REFORM AND EXTENSION OF BIODIESEL TAX IN-**  
7 **CENTIVES.**

8 (a) INCOME TAX CREDIT.—

1           (1) IN GENERAL.—So much of section 40A of  
2           the Internal Revenue Code as precedes subsection  
3           (c) is amended to read as follows:

4   **“SEC. 40A. BIODIESEL FUELS CREDIT.**

5           “(a) IN GENERAL.—For purposes of section 38, the  
6           biodiesel fuels credit determined under this section for the  
7           taxable year is \$1.00 for each gallon of biodiesel produced  
8           by the taxpayer which during the taxable year—

9                   “(1) is sold by the taxpayer to another per-  
10           son—

11                           “(A) for use by such other person’s trade  
12                           or business as a fuel or in the production of a  
13                           qualified biodiesel mixture (other than casual  
14                           off-farm production), or

15                           “(B) who sells such biodiesel at retail to  
16                           another person and places such biodiesel in the  
17                           fuel tank of such other person, or

18                           “(2) is used by such taxpayer for any purpose  
19           described in paragraph (1).

20           “(b) INCREASED CREDIT FOR SMALL PRODUCERS.—

21                   “(1) IN GENERAL.—In the case of any eligible  
22           small biodiesel producer, subsection (a) shall be ap-  
23           plied by increasing the dollar amount contained  
24           therein by 10 cents.

1           “(2) LIMITATION.—Paragraph (1) shall only  
2 apply with respect to the first 15,000,000 gallons of  
3 biodiesel produced by any eligible small biodiesel  
4 producer during any taxable year.”.

5           (2) DEFINITIONS AND SPECIAL RULES.—Sec-  
6 tion 40A(d) of such Code is amended by striking all  
7 that follows paragraph (1) and inserting the fol-  
8 lowing:

9           “(2) QUALIFIED BIODIESEL MIXTURE; BIO-  
10 DIESEL MIXTURE.—

11           “(A) QUALIFIED BIODIESEL MIXTURE.—

12           “(i) IN GENERAL.—The term ‘quali-  
13 fied biodiesel mixture’ means a biodiesel  
14 mixture which is—

15           “(I) sold by the producer of such  
16 mixture to any person for use as a  
17 fuel, or

18           “(II) used by the producer of  
19 such mixture as a fuel.

20           “(ii) SALE OR USE MUST BE IN  
21 TRADE OR BUSINESS, ETC.—A biodiesel  
22 mixture shall not be treated as a qualified  
23 biodiesel mixture unless the sale or use de-  
24 scribed in clause (i) is in a trade or busi-

1           ness of the person producing the biodiesel  
2           mixture.

3           “(B) BIODIESEL MIXTURE.—The term  
4           ‘biodiesel mixture’ means a mixture which con-  
5           sists of biodiesel and diesel fuel (as defined in  
6           section 4083(a)(3)), determined without regard  
7           to any use of kerosene.

8           “(3) BIODIESEL NOT USED FOR A QUALIFIED  
9           PURPOSE.—If—

10           “(A) any credit was determined with re-  
11           spect to any biodiesel under this section, and

12           “(B) any person uses such biodiesel for a  
13           purpose not described in subsection (a),

14           then there is hereby imposed on such person a tax  
15           equal to the product of the rate applicable under  
16           subsection (a) and the number of gallons of such  
17           biodiesel.

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

22           “(5) LIMITATION TO BIODIESEL WITH CONNEC-  
23           TION TO THE UNITED STATES.—

24           “(A) IN GENERAL.—No credit shall be de-  
25           termined under subsection (a) with respect to

1           biodiesel unless such biodiesel is produced in  
 2           the United States from qualified feedstocks.  
 3           For purposes of this paragraph, the term  
 4           ‘United States’ includes any possession of the  
 5           United States.

6                   “(B) QUALIFIED FEEDSTOCKS.—For pur-  
 7           poses of subparagraph (A), the term ‘qualified  
 8           feedstock’ means any feedstock which is allow-  
 9           able for a fuel that is assigned a D code of 4  
 10          under section 80.1426(f) of title 40, Code of  
 11          Federal Regulations.”.

12          (3) RULES FOR SMALL BIODIESEL PRO-  
 13          DUCERS.—

14                   (A) IN GENERAL.—Section 40A(e) of such  
 15          Code is amended—

16                           (i) by striking “agri-biodiesel” each  
 17                           place it appears in paragraphs (1) and  
 18                           (5)(A) and inserting “biodiesel”,

19                           (ii) by striking “subsection (b)(4)(C)”  
 20                           each place it appears in paragraphs (2)  
 21                           and (3) and inserting “subsection (b)(2)”,  
 22                           and

23                           (iii) by striking “subsection (a)(3)”  
 24                           each place it appears in paragraphs (5)(A),

1 (6)(A)(i), and (6)(B)(i) and inserting  
2 “subsection (b)”.

3 (B) The heading for subsection (e) of sec-  
4 tion 40A of such Code is amended by striking  
5 “AGRI-BIODIESEL” and inserting “BIODIESEL”.

6 (C) The headings for paragraphs (1) and  
7 (6) of section 40A(e) of such Code are each  
8 amended by striking “AGRI-BIODIESEL” and in-  
9 serting “BIODIESEL”.

10 (4) RENEWABLE DIESEL.—

11 (A) IN GENERAL.—Paragraph (3) of sec-  
12 tion 40A(f) of such Code is amended to read as  
13 follows:

14 “(3) RENEWABLE DIESEL DEFINED.—

15 “(A) IN GENERAL.—The term ‘renewable  
16 diesel’ means liquid fuel derived from biomass  
17 which—

18 “(i) is not a mono-alkyl ester,

19 “(ii) can be used in engines designed  
20 to operate on conventional diesel fuel, and

21 “(iii) meets the requirements for any  
22 Grade No. 1–D fuel or Grade No. 2–D fuel  
23 covered under the American Society for  
24 Testing and Materials specification D–  
25 975–13a.

1           “(B) EXCEPTIONS.—Such term shall not  
2 include—

3           “(i) any liquid with respect to which  
4 a credit may be determined under section  
5 40,

6           “(ii) any fuel derived from coproc-  
7 essing biomass with a feedstock which is  
8 not biomass, or

9           “(iii) any fuel that is not chemically  
10 equivalent to petroleum diesel fuels that  
11 can meet fuel quality specifications appli-  
12 cable to diesel fuel, gasoline, or aviation  
13 fuel.

14           “(C) BIOMASS.—For purposes of this  
15 paragraph, the term ‘biomass’ has the meaning  
16 given such term by section 45K(c)(3).”.

17           (B) CONFORMING AMENDMENTS.—Section  
18 40A(f) of such Code is amended—

19           (i) by striking “Subsection (b)(4)” in  
20 paragraph (2) and inserting “Subsection  
21 (b)”, and

22           (ii) by striking paragraph (4) and in-  
23 serting the following:

24           “(4) CERTAIN AVIATION FUEL.—Except as pro-  
25 vided paragraph (3)(B), the term ‘renewable diesel’

1 shall include fuel derived from biomass which meets  
 2 the requirements of a Department of Defense speci-  
 3 fication for military jet fuel or an American Society  
 4 for Testing and Materials specification for aviation  
 5 turbine fuel.”.

6 (5) EXTENSION.—Subsection (g) of section 40A  
 7 of such Code is amended by striking “December 31,  
 8 2016” and inserting “December 31, 2020”.

9 (6) CLERICAL AMENDMENT.—The table of sec-  
 10 tions for subpart D of part IV of subchapter A of  
 11 chapter 1 of such Code is amended by striking the  
 12 item relating to section 40A and inserting the fol-  
 13 lowing new item:

“Sec. 40A. Biodiesel fuels credit.”.

14 (b) EXCISE TAX CREDIT.—

15 (1) REFORM.—Subsection (c) of section 6426  
 16 of the Internal Revenue Code of 1986 is amended to  
 17 read as follows:

18 “(c) BIODIESEL PRODUCTION CREDIT.—

19 “(1) IN GENERAL.—For purposes of this sec-  
 20 tion, the biodiesel production credit is \$1.00 for each  
 21 gallon of biodiesel produced by the taxpayer and  
 22 which—

23 “(A) is sold by such taxpayer to another  
 24 person—



1           “(i) for use by such other person’s  
2           trade or business as a fuel or in the pro-  
3           duction of a qualified biodiesel mixture  
4           (other than casual off-farm production), or

5           “(ii) who sells such biodiesel at retail  
6           to another person and places such biodiesel  
7           in the fuel tank of such other person, or

8           “(B) is used by such taxpayer for any pur-  
9           pose described in subparagraph (A).

10           “(2) DEFINITIONS.—Any term used in this sub-  
11           section which is also used in section 40A shall have  
12           the meaning given such term by section 40A.

13           “(3) TERMINATION.—This subsection shall not  
14           apply to any sale, use, or removal after December  
15           31, 2020.”.

16           (2) PRODUCER REGISTRATION REQUIRE-  
17           MENT.—Subsection (a) of section 6426 of such Code  
18           is amended by striking “subsections (d) and (e)” in  
19           the flush sentence at the end and inserting “sub-  
20           sections (c), (d), and (e)”.

21           (3) RECAPTURE.—

22           (A) IN GENERAL.—Subsection (f) of sec-  
23           tion 6426 of such Code is amended—

1 (i) by striking “or biodiesel” each  
2 place it appears in subparagraphs (A) and  
3 (B)(i) of paragraph (1),

4 (ii) by striking “or biodiesel mixture”  
5 in paragraph (1)(A), and

6 (iii) by redesignating paragraph (2) as  
7 paragraph (3) and by inserting after para-  
8 graph (1) the following new paragraph:

9 “(2) BIODIESEL.—If any credit was determined  
10 under this section or paid pursuant to section  
11 6427(e) with respect to the production of any bio-  
12 diesel and any person uses such biodiesel for a pur-  
13 pose not described in subsection (c)(1), then there is  
14 hereby imposed on such person a tax equal to \$1 for  
15 each gallon of such biodiesel.”.

16 (B) CONFORMING AMENDMENTS.—

17 (i) Paragraph (3) of section 6426(f)  
18 of such Code, as redesignated by subpara-  
19 graph (A)(iii), is amended by inserting “or  
20 (2)” after “paragraph (1)”.

21 (ii) The heading for paragraph (1) of  
22 section 6426(f) of such Code is amended  
23 by striking “IMPOSITION OF TAX” and in-  
24 serting “IN GENERAL”.

1           (4) LIMITATION.—Section 6426(i) of such Code  
2 is amended—

3           (A) in paragraph (2)—

4                 (i) by striking “biodiesel or”, and

5                 (ii) by striking “BIODIESEL AND” in  
6 the heading, and

7           (B) by inserting after paragraph (2) the  
8 following new paragraph:

9           “(3) BIODIESEL.—No credit shall be deter-  
10 mined under subsection (a) with respect to biodiesel  
11 unless such biodiesel is produced in the United  
12 States from qualified feedstocks (as defined in sec-  
13 tion 40A(d)(5)(B)).”.

14           (5) CLERICAL AMENDMENTS.—

15           (A) The heading of section 6426 of such  
16 Code is amended by striking “**ALCOHOL**  
17 **FUEL, BIODIESEL, AND ALTERNATIVE**  
18 **FUEL MIXTURES**” and inserting “**ALCOHOL**  
19 **FUEL MIXTURES, BIODIESEL PRODUCTION,**  
20 **AND ALTERNATIVE FUEL MIXTURES**”.

21           (B) The item relating to section 6426 in  
22 the table of sections for subchapter B of chap-  
23 ter 65 of such Code is amended by striking “al-  
24 cohol fuel, biodiesel, and alternative fuel mix-  
25 tures” and inserting “alcohol fuel mixtures, bio-

1 diesel production, and alternative fuel mix-  
2 tures”.

3 (c) EXCISE PAYMENTS.—Subsection (e) of section  
4 6427 of the Internal Revenue Code of 1986 is amended—

5 (1) by striking “or the biodiesel mixture credit”  
6 in paragraph (1);

7 (2) by redesignating paragraphs (3) through  
8 (6) as paragraphs (4) through (7), respectively, and  
9 by inserting after paragraph (2) the following new  
10 paragraph:

11 “(3) BIODIESEL PRODUCTION CREDIT.—If any  
12 person produces biodiesel and sells or uses such bio-  
13 diesel as provided in section 6426(c)(1), the Sec-  
14 retary shall pay (without interest) to such person an  
15 amount equal to the biodiesel production credit with  
16 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 icated 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”; and

24 (5) in paragraph (7)(B), as redesignated by  
25 paragraph (2)—

1 (A) by striking “biodiesel mixture (as de-  
2 fined in section 6426(c)(3))” and inserting  
3 “biodiesel (within the meaning of section  
4 40A)”; and

5 (B) by striking “December 31, 2016” and  
6 inserting “December 31, 2020”.

7 (d) GUIDANCE.—Not later than 30 days after the  
8 date of the enactment of this Act, the Secretary of the  
9 Treasury, or the Secretary’s delegate, shall issue prelimi-  
10 nary guidance with respect to the amendments made by  
11 this section.

12 (e) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to fuel sold or used after December  
14 31, 2016.

15 (f) SPECIAL RULE FOR 2017.—Notwithstanding any  
16 other provision of law, in the case of any biodiesel mixture  
17 credit properly determined under section 6426(c) of the  
18 Internal Revenue Code of 1986 for period beginning after  
19 December 31, 2016, and ending before the date of the en-  
20 actment of this Act, such credit shall be allowed, and any  
21 refund or payment attributable to such credit (including  
22 any payment under section 6427(e) of such Code) shall  
23 be made, only in such manner as the Secretary of the  
24 Treasury (or the Secretary’s delegate) shall provide. Such  
25 Secretary shall issue guidance within 30 days after the

1 date of the enactment of this Act providing for a one- time  
2 submission of claims covering periods described in the pre-  
3 ceding sentence. Such guidance shall provide for a 180-  
4 day period for the submission of such claims (in such man-  
5 ner as prescribed by such Secretary) to begin not later  
6 than 30 days after such guidance is issued. Such claims  
7 shall be paid by such Secretary not later than 60 days  
8 after receipt. If such Secretary has not paid pursuant to  
9 a claim filed under this subsection within 60 days after  
10 the date of the filing of such claim, the claim shall be paid  
11 with interest from such date determined by using the over-  
12 payment rate and method under section 6621 of such  
13 Code.

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