

108TH CONGRESS  
1ST SESSION

# S. 355

To amend the Internal Revenue Code of 1986 to allow a credit for biodiesel fuel.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2003

Mrs. LINCOLN (for herself, Mr. GRASSLEY, Mr. HAGEL, Mr. DAYTON, Mr. DURBIN, Mr. HARKIN, Mr. COLEMAN, and Mr. JOHNSON) 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 allow a credit for biodiesel 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. SHORT TITLE.**

4 This Act may be cited as the “Biodiesel Promotion  
5 Act of 2003”.

6 **SEC. 2. INCENTIVES FOR BIODIESEL.**

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

8 (1) IN GENERAL.—Subpart D of part IV of  
9 subchapter A of chapter 1 of the Internal Revenue

1 Code of 1986 (relating to business related credits) is  
2 amended by inserting after section 40 the following  
3 new section:

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

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

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

11 “(1) BIODIESEL MIXTURE CREDIT.—

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

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

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

1           “(ii) in the case of a mixture with bio-  
2           diesel NV, or a combination of biodiesel V  
3           and biodiesel NV, 0.5 cent for each whole  
4           percentage point (not exceeding 20 per-  
5           centage points) of such biodiesel in such  
6           mixture.

7           “(2) QUALIFIED BIODIESEL MIXTURE.—

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

11           “(i) is sold by the taxpayer producing  
12           such mixture to any person for use as a  
13           fuel, or

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

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

18           “(i) IN GENERAL.—Biodiesel V or bio-  
19           diesel NV used in the production of a  
20           qualified biodiesel mixture shall be taken  
21           into account—

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

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

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

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

14                  “(c) COORDINATION WITH EXEMPTION FROM EX-  
15                  CISE TAX.—The amount of the credit determined under  
16                  this section with respect to any biodiesel V shall, under  
17                  regulations prescribed by the Secretary, be properly re-  
18                  duced to take into account any benefit provided with re-  
19                  spect to such biodiesel V solely by reason of the application  
20                  of section 4041(n) or section 4081(f).

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

23                         “(1) BIODIESEL V DEFINED.—The term ‘bio-  
24                         diesel V’ means the monoalkyl esters of long chain  
25                         fatty acids derived solely from virgin vegetable oils

1 for use in compressional-ignition (diesel) engines.  
2 Such term shall include esters derived from vege-  
3 table oils from corn, soybeans, sunflower seeds, cot-  
4 tonseeds, canola, crambe, rapeseeds, safflowers,  
5 flaxseeds, rice bran, and mustard seeds.

6 “(2) BIODIESEL NV DEFINED.—The term ‘bio-  
7 diesel NV’ means the monoalkyl esters of long chain  
8 fatty acids derived from nonvirgin vegetable oils or  
9 animal fats for use in compressional-ignition (diesel)  
10 engines.

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

14 “(i) the registration requirements for  
15 fuels and fuel additives established by the  
16 Environmental Protection Agency under  
17 section 211 of the Clean Air Act (42  
18 U.S.C. 7545), and

19 “(ii) the requirements of the Amer-  
20 ican Society of Testing and Materials  
21 D6751.

22 “(4) BIODIESEL MIXTURE NOT USED AS A  
23 FUEL, ETC.—

24 “(A) IMPOSITION OF TAX.—If—

1           “(i) any credit was determined under  
2           this section with respect to biodiesel V or  
3           biodiesel NV used in the production of any  
4           qualified biodiesel mixture, and

5           “(ii) any person—

6                   “(I) separates such biodiesel  
7                   from the mixture, or

8                   “(II) without separation, uses the  
9                   mixture other than as a fuel,

10           then there is hereby imposed on such per-  
11           son a tax equal to the product of the bio-  
12           diesel mixture rate applicable under sub-  
13           section (b)(1)(B) and the number of gal-  
14           lons of the mixture.

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

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

1       “(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT  
2 NOT APPLY.—

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

5           “(2) TIME FOR MAKING ELECTION.—An elec-  
6 tion under paragraph (1) for any taxable year may  
7 be made (or revoked) at any time before the expira-  
8 tion of the 3-year period beginning on the last date  
9 prescribed by law for filing the return for such tax-  
10 able year (determined without regard to extensions).

11          “(3) MANNER OF MAKING ELECTION.—An elec-  
12 tion under paragraph (1) (or revocation thereof)  
13 shall be made in such manner as the Secretary may  
14 by regulations prescribe.

15          “(f) TERMINATION.—This section shall not apply to  
16 any fuel sold after December 31, 2005.”.

17           (2) CREDIT TREATED AS PART OF GENERAL  
18 BUSINESS CREDIT.—Section 38(b) of the Internal  
19 Revenue Code of 1986 is amended by striking  
20 “plus” at the end of paragraph (14), by striking the  
21 period at the end of paragraph (15) and inserting “,  
22 plus”, and by adding at the end the following new  
23 paragraph:

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

1 (3) CONFORMING AMENDMENTS.—

2 (A) Section 39(d) of the Internal Revenue  
3 Code of 1986 is amended by adding at the end  
4 the following new paragraph:

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(c) of such Code is amend-  
12 ed by striking “and” at the end of paragraph  
13 (9), by striking the period at the end of para-  
14 graph (10), and by adding at the end the fol-  
15 lowing new paragraph:

16 “(11) the biodiesel fuels credit determined  
17 under 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 adding after the item relat-  
23 ing 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 V MIXTURES.—

6           (1) IN GENERAL.—Section 4081 of the Internal  
7           Revenue Code of 1986 (relating to manufacturers  
8           tax on petroleum products) is amended by adding at  
9           the end the following new subsection:

10          “(f) BIODIESEL V MIXTURES.—Under regulations  
11 prescribed by the Secretary—

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

18           “(2) TAX PRIOR TO MIXING.—

19           “(A) IN GENERAL.—In the case of the re-  
20           moval or entry of diesel fuel for use in pro-  
21           ducing at the time of such removal or entry a  
22           qualified biodiesel mixture with biodiesel V, the  
23           rate of tax under subsection (a) shall be the  
24           rate determined under subparagraph (B).

1           “(B) DETERMINATION OF RATE.—For  
2           purposes of subparagraph (A), the rate deter-  
3           mined under this subparagraph is the rate de-  
4           termined under paragraph (1), divided by a per-  
5           centage equal to 100 percent minus the per-  
6           centage of biodiesel V which will be in the mix-  
7           ture.

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

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

15          (2) CONFORMING AMENDMENTS.—

16                 (A) Section 4041 of the Internal Revenue  
17                 Code of 1986 is amended by adding at the end  
18                 the following new subsection:

19                 “(n) BIODIESEL V MIXTURES.—Under regulations  
20                 prescribed by the Secretary, in the case of the sale or use  
21                 of a qualified biodiesel mixture (as defined in section  
22                 40A(b)(2)) with biodiesel V, the rates under paragraphs  
23                 (1) and (2) of subsection (a) shall be the otherwise appli-  
24                 cable rates, reduced by any applicable biodiesel mixture  
25                 rate (as defined in section 40A(b)(1)(B)).”.

1                   (B) Section 6427 of such Code is amended  
2                   by redesignating subsection (p) as subsection  
3                   (q) and by inserting after subsection (o) the fol-  
4                   lowing new subsection:

5                   “(p) BIODIESEL V MIXTURES.—Except as provided  
6 in subsection (k), if any diesel fuel on which tax was im-  
7 posed by section 4081 at a rate not determined under sec-  
8 tion 4081(f) is used by any person in producing a qualified  
9 biodiesel mixture (as defined in section 40A(b)(2)) with  
10 biodiesel V which is sold or used in such person’s trade  
11 or business, the Secretary shall pay (without interest) to  
12 such person an amount equal to the per gallon applicable  
13 biodiesel mixture rate (as defined in section 40A(b)(1)(B))  
14 with respect to such fuel.”.

15                   (3) EFFECTIVE DATE.—The amendments made  
16                   by this subsection shall apply to any fuel sold after  
17                   December 31, 2002, and before January 1, 2006.

18                   (c) HIGHWAY TRUST FUND HELD HARMLESS.—  
19 There are hereby transferred (from time to time) from the  
20 funds of the Commodity Credit Corporation amounts de-  
21 termined by the Secretary of the Treasury to be equivalent  
22 to the reductions that would occur (but for this sub-  
23 section) in the receipts of the Highway Trust Fund by  
24 reason of the amendments made by this section.

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